

FREEDOM FROM RELIGION §
FOUNDATION, INC., §
Plaintiff, §
§
vs. § CASE NO. 1-16:CV-00233
§
GOVERNOR GREG ABBOTT, in §
his official and individual §
capacities, and JOHN SNEED, §
Executive Director of the §
Texas State Preservation §
Board, in his official §
capacity, §
Defendants. §

A black and white graphic of a rounded rectangular label. The top portion is a black horizontal bar with the word "EXHIBIT" in white, bold, sans-serif capital letters. Below this bar, the letter "A" is centered in a large, bold, black serif font.



ORAL AND VIDEOTAPED DEPOSITION OF
ROBERT DAVIS
APRIL 24, 2017

* * * * *

ORAL AND VIDEOTAPED DEPOSITION OF ROBERT
DAVIS, produced as a witness at the instance of the
Plaintiff, and duly sworn, was taken in the
above-styled and numbered cause on the 24th of April,
2017, from 10:08 a.m. to 1:33 p.m., before Shelly M.
Tucker, CSR in and for the State of Texas, reported by
machine shorthand at the offices of the State
Preservation Board, 201 East 14th Street, Suite 950,
Austin, Texas, pursuant to the Federal Rules of Civil
Procedure and/or the provisions stated on the record.

APPEARANCES

FOR THE PLAINTIFF:

Richard L. Bolton
BOARDMAN AND CLARK, LLP
1 South Pinckney Street, Suite 410
Madison, Wisconsin 53703-4256
Telephone: 608-283-1789
Fax: 608-283-1709
Email: rbolton@boardmanclark.com

FOR THE DEFENDANTS:

Anne Marie Mackin
OFFICE OF THE ATTORNEY GENERAL
General Litigation Division
Post Office Box 12548
Austin, Texas 78711-2548
Telephone: 512-475-4074
Fax: 512-320-0667
Email: anna.mackin@oag.texas.gov

ALSO PRESENT:

Al Rodriguez, Videographer
Leslie Pawelka

Robert Davis

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1 THE VIDEOGRAPHER: Today's date is April
2 24th, 2017. The approximate time is 10:08 a.m.
3 Beginning tape number 1, we're on the record.

4 ROBERT DAVIS,
5 having been first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. BOLTON:

8 Q. Would you state your name for the record,
9 please.

10 A. Robert Davis.

11 Q. And how are you employed?

12 A. I am the events and exhibits coordinator for
13 the State Preservation Board.

14 Q. Events and exhibits coordinator?

15 A. Yes, sir.

16 Q. How long have you held that position?

17 A. About four and a half years.

18 Q. Prior to holding that position, what did you
19 do for a living?

20 A. I was a technician in the media services
21 department with the Texas Senate, so still in the
22 building.

23 Q. So you're employed by the State Preservation
24 Board, then?

25 A. That's correct.

1 Q. Do you know approximately how many employees
2 there are with the preservation board?

3 A. Approximately 170, 150.

4 Q. And in terms of -- as -- as the events and
5 exhibits coordinator, are there people that report to
6 you?

7 A. No.

8 Q. Okay.

9 A. I don't have any.

10 Q. Is there -- are there -- is there anybody else
11 with sort of a lateral position similar to yours?

12 A. Sort of. I mean, if I missed time, if I took
13 a month off from work, somebody would cover for me.
14 But there's no position.

15 Q. They don't let you do that, do they?

16 A. Not very often.

17 Q. As the events and exhibits coordinator, then,
18 can you -- can you describe for us what your duties
19 include?

20 A. Well, I -- I schedule the event and exhibit
21 spaces. It's a lot of communication with potential
22 event holders and exhibit holders to make sure they
23 understand the rules and policies for such in the State
24 Capitol.

25 Q. And then do you -- and describe the process,

1 then, if somebody wants to display an exhibit in the
2 Capitol.

3 A. Typically there's a phone call or first
4 contact. It might be an email, but it's typically a
5 phone call. And someone wants to know how they can do
6 that, and I'll kind of get some information from them
7 about what they're trying to do. You know, if it's
8 something that's completely -- you know, completely
9 commercial, I'll tell them right there, you know, it's
10 not -- it's not going to work if you're trying to do a
11 Snickers display or something.

12 So it becomes a casual conversation.
13 Then I'll send them the paperwork or refer them to our
14 website where they can find it, blank copies of our
15 paperwork, and then they can apply.

16 Q. And what does the paperwork consist of to
17 initiate the process?

18 A. It's a two-page application. It's a lot of
19 particulars: who, what, when, where, which exhibit
20 space they're applying for, a list of -- the
21 description of the exhibit, and a list to -- a question
22 to list the public purpose of the exhibit, and then
23 signature, date.

24 Q. And then when that paperwork to initiate the
25 process is -- is filed, then, are -- in terms of events

1 and exhibits, are you basically, other than time off
2 and whatnot, the only person at the preservation board,
3 then, who will be involved in processing that
4 application?

5 A. Not necessarily. If it's -- let me go back.
6 You asked about the application. That -- that's the
7 application. There's also a sponsorship form component
8 where a member of the legislature should sponsor --
9 would need to sponsor the event. That, together with
10 the application -- once I've received both of those,
11 that's when I'll review for approval. As far as giving
12 approval, if it's a school district doing student art
13 contest winners, that's kind of a slam-dunk. I would
14 just --

15 Q. That's what?

16 A. That's kind of a slam-dunk. I would just
17 approve that. It -- you know, that would qualify. If
18 it's something that might be sensitive, then I would
19 definitely run it up the flagpole to my superiors here
20 at the preservation board.

21 Q. And the -- that second category, how did you
22 describe it in terms of where you would go up?

23 A. If it's sensitive, if it seems like something
24 that might be potentially damaging to the historic --
25 integrity of the Capitol, or if it's something that,

1 you know, just might be a little bit more of a
2 sensitive issue or if it, you know, toes the line of
3 public purpose, something like that so . . .

4 Q. In terms of -- and when you say you -- you
5 would -- you would go, in -- in that second category,
6 might go up the chain to the people that you report to,
7 who would that -- if you were to involve somebody else
8 in the approval process for a sensitive display, who --
9 who might -- who would you be involving?

10 A. Anybody in the agency that I felt needed to
11 have input, if the -- usually I would go to my
12 supervisor, who is the director of administration.
13 But, you know, quite often that would also include the
14 public information officer, director of facilities,
15 curatorial director, staff attorney, and the executive
16 director.

17 Q. And the current executive director is whom?

18 A. Rod Welsh.

19 Q. And prior to that?

20 A. John Sneed.

21 Q. And how long -- was he the executor director
22 when you began?

23 A. Yes.

24 Q. And Mr. Sneed retired. Is that correct?

25 A. That's my understanding.

1 Q. Is he -- do you know if he retired from all
2 forms of gainful employment or --

3 A. I don't know.

4 Q. Do you know about how old he is?

5 A. About 60- --

6 Q. Pardon me?

7 A. 62, 63. I don't know.

8 Q. In terms of what you described as -- if it was
9 a sensitive display or exhibit, during the time that
10 you've been the coordinator for events and exhibits,
11 about how many times have -- have you dealt with what
12 you thought was a sensitive application?

13 A. Ballpark figure, 20, 25 times. Could be more,
14 could be less. I don't know.

15 Q. And did any of those involve applications that
16 you considered to involve some sort of sensitive or
17 controversial subject matter?

18 A. That would probably be just about all of them.

19 Q. Okay. The reason I ask is you said that
20 one -- one situation would be if you're concerned about
21 damage to the Capitol, you -- you might involve others.
22 The -- the 20 that you referenced, you're not
23 including, then, that type of oversight, where you'd
24 get some -- some input?

25 A. I mean, I -- I'd be guessing. I don't really

1 remember how many had that . . .

2 Q. Can you recall any instances in which you went
3 up the chain of command to involve somebody where --
4 where the exhibit or the event involved what you
5 thought was a controversial matter?

6 A. I mean, I can probably recall a couple. But,
7 you know, the ones that come to mind are the Freedom
8 From Religion display and the Thomas More Society.

9 Q. And the what?

10 A. The Thomas More Society.

11 Q. The nativity?

12 A. Yes, sir.

13 Q. Do you recall any other applications for event
14 or exhibit approval that you can recall that involved a
15 controversial subject?

16 A. I mean, we've had some, maybe, where they were
17 one side or the other of a -- of the abortion debate,
18 and that's something where I'm going to, you know --
19 like I said, it's a sensitive issue. I'm going to ask
20 other people about it.

21 The majority of the exhibits, like I
22 said, I -- I called it a slam-dunk earlier, where it's
23 like district student artwork or something like that.
24 That's typically what we see here.

25 Q. Who was the events and exhibits coordinator

1 prior to you?

2 A. I believe her name is Mindy Eppler.

3 Q. E-p-p-l-e-r?

4 A. I think so.

5 Q. And did you receive any -- any training from
6 Ms. Eppler when you began?

7 A. No.

8 Q. Did you receive any training to perform your
9 duties as the events and exhibits coordinator?

10 A. Sure. I was kind of given the -- the ropes by
11 our director of administration.

12 Q. And at that time -- is it the same -- same
13 person?

14 A. Yes.

15 Q. When you began as now?

16 A. Yes.

17 Q. And -- and who is that person?

18 A. Her name is Linda Gaby.

19 Q. Linda what?

20 A. Gaby, G-a-b-y.

21 Q. And what -- what do you recall in terms of
22 being shown the ropes by -- by Ms. Gaby?

23 A. We had a few conversations about exhibits, but
24 mostly it was showing me the exhibit spaces where
25 things would be properly displayed. The rest is kind

1 of in our policies. And if -- you know, I don't
2 remember, but if I had any questions about it, any of
3 our policies, I would have asked her to clarify them
4 for me but . . .

5 Q. And in terms of policies, what are you
6 referring to?

7 A. Our exhibit -- we have a set of exhibit
8 policies for a display in the State Capitol.

9 (Exhibit 1 marked)

10 Q. Mr. Davis, we marked as Exhibit 1 to your
11 deposition a four-page document. Are you familiar with
12 that document?

13 A. Yes.

14 Q. Are the first two pages of that document
15 the -- the application form that you were describing?

16 A. It looks to me like an older version of it,
17 but yes.

18 Q. Okay.

19 A. This is an application for exhibits.

20 Q. The current version that you're using, is it
21 any -- as far as you know, is it substantively
22 different than --

23 A. No. We just cleaned up some of the contact
24 information. I don't think we're requiring people to
25 give us their fax number anymore.

1 Q. And then --

2 A. But . . .

3 Q. The third and fourth page -- pages of
4 Exhibit 1, are you familiar with those?

5 A. Yes, sir. Exhibit policies.

6 Q. And a moment ago you were referring to
7 policies in terms of the application process and -- and
8 your duties. Are these the policies that you're
9 referring to?

10 A. Yes.

11 Q. Now, are these policies currently in effect?

12 A. I believe so, yes.

13 Q. And were they in effect when you began as the
14 coordinator?

15 A. Yeah. I don't recall if we've had any policy
16 updates since I've been here. And this one says May
17 2012, so that would include the time --

18 Q. When you --

19 A. -- that I've been here.

20 Q. When you began as the coordinator to events
21 and exhibits, then, did you have an opportunity at the
22 beginning of your employment, then, to review pages 3
23 and 4 of Exhibit 1, the -- the policies that you've
24 described?

25 A. Yes.

1 Q. And did you -- did you discuss them with
2 Ms. Gaby?

3 A. I'm sure I did, because, you know, we have
4 policies for exhibit spaces and event spaces. I'm sure
5 I asked her questions about it at the time.

6 Q. Do you recall whether you had any questions
7 when you began?

8 A. I don't remember what I would have had
9 questions about. I don't -- I don't really remember
10 what I would have had questions about at that time.

11 Q. Did you receive any -- any specific training
12 in the application of these policies?

13 A. Not -- I mean, no, I don't think I received --
14 I don't -- I don't think I received any training in
15 that, in the application of these policies, that I
16 recall. I mean, it's -- they're -- they're pretty
17 clearly written, and I would have asked if -- if
18 something didn't seem clear to me, I would have asked
19 at that time.

20 Q. In the -- and I'm looking at page 3 of
21 Exhibit 1 and the subsection C entitled Criteria for
22 Exhibit Approval. Do you see that?

23 A. Uh-huh.

24 Q. And the second bullet point there says,
25 "Exhibits must be for a public purpose as defined in

1 subsection (A)(3)" --

2 A. Correct.

3 Q. -- of the policy above.

4 And looking back there, then, it says,
5 "The chief test of what constitutes a public purpose is
6 that the public generally must have a direct interest
7 in the purpose and the community at large is to be
8 benefited."

9 Do you see that?

10 A. Yes, sir.

11 Q. Did you have -- when you began your employment
12 as the exhibits and events coordinator, did you have
13 any instruction as to what that -- what that meant or
14 what you were to be looking for?

15 A. I don't think I had a -- I -- I feel like that
16 was pretty clearly written to me, and I -- I felt like
17 I understood that so . . .

18 Q. And has -- has your understanding of -- of
19 that -- the public purpose, as you construe it and
20 apply it in your job, has that changed since you began?

21 A. No.

22 Q. Okay. Where it says the public generally must
23 have a direct interest and a purpose of -- of the
24 exhibit, what did you understand -- or what do you
25 understand that to mean?

1 A. Can you ask -- can you say that again?

2 MR. BOLTON: Can you read the question
3 back?

4 (Requested portion was read)

5 A. It means that the public must generally have a
6 direct interest in the purpose of the exhibit.

7 Q. And what would constitute, as you apply
8 that -- that term, a direct interest?

9 MS. MACKIN: Objection, form.

10 MR. BOLTON: Pardon?

11 MS. MACKIN: Objection, form.

12 Q. You can answer that.

13 A. Oh.

14 MS. MACKIN: Go ahead and answer.

15 A. I mean, something that is student artwork or
16 an exhibit about conservation of water in the state of
17 Texas. Both of those seem pretty direct.

18 Q. So for instance, with regard to student
19 artwork, you indicate that that would be a pretty
20 straightforward example of something that the public
21 has a direct interest in. Why -- why do you say that?

22 A. Well, it wouldn't be -- I mean, if the
23 students -- student art, we would keep them from
24 selling it or advertising it as being for sale, so it
25 couldn't be gallery space. But if they just want to

1 display, you know, artwork from a particular school
2 district, that qualifies in that, you know, the public
3 may want to see that.

4 Q. And when you -- when you say the public would
5 want to see that, how do you define public, then?

6 A. Visitors to the Capitol.

7 Q. Would --

8 A. Staff.

9 Q. Would it be everybody?

10 A. Sure.

11 Q. So you -- but you're -- I don't think you're
12 saying that everybody must have --

13 A. Well, I can't speculate as to what anybody --
14 what people want to see, but if it -- if it's not --
15 you know, in speaking about the artwork, if it's not
16 for sale or, you know, doesn't violate any other rules
17 in that they hang it on the walls or something like
18 that, then that -- that to me seems like it fits within
19 our rules pretty well.

20 Q. Is there any sort of numerosity test that you
21 use to determine whether or not the public would have a
22 direct interest in the purpose of an exhibit?

23 A. Numerosity?

24 Q. Number of people -- I mean, presumably -- and
25 maybe -- maybe I'm misunderstanding you. But are you

1 saying, then, that the public generally must have a
2 direct interest in the purpose of the exhibit, that
3 everybody must be interested in it or -- and if it's
4 not everybody, then my question is, is there some
5 threshold of -- of public interest that you use?

6 A. Well, it says here "community at large is to
7 be benefited," so that's -- that's kind of the
8 barometer that we look at for . . .

9 Q. Okay. Now, I read that as -- to be
10 conjunctive, that the -- that the public generally must
11 have a direct interest and the community at large is to
12 be benefited. Do you -- I construed those as two --
13 two separate criteria.

14 A. Hmm. I don't -- I don't, really.

15 Q. Okay.

16 A. I don't -- I don't always think of that as two
17 separate criteria.

18 Q. So in terms of "the community at large is to
19 be benefited," then, you basically would construe that
20 as not really being substantively different than the
21 public having a direct interest in the purpose of the
22 exhibit?

23 MS. MACKIN: Objection, form. You can
24 answer.

25 A. I'm sorry. Can you say that again?

1 Q. Do you construe the requirement that the
2 public generally have a -- the public generally must
3 have a direct interest in the purpose of the exhibit,
4 on the one hand, and that the community at large is to
5 be benefited as essentially restatements of the same
6 thing?

7 A. I -- I think so. That's kind of how I look at
8 it.

9 Q. And so when I asked in terms of numerosity, in
10 terms of defining how much public interest is
11 necessary, you -- you then said, well, the criteria
12 that we use is "community at large is to be benefited."
13 How do you -- how do you then determine whether the
14 community at large is to be benefited by an exhibit?

15 A. Well, they would state their public purpose on
16 the application, so I would look at what they read
17 and -- or what they wrote. Excuse me. And, you know,
18 if they state in their application that "We believe the
19 public needs to see this," that --

20 Q. That the public what?

21 A. "That the public needs to see our student
22 artwork" -- you know, I'm -- I'm not a sensor, so I'm
23 not -- I'm not a barometer of good art.

24 Q. Probably none of us in this room are. We
25 won't -- we won't poll others.

1 So if the -- if the applicant indicates
2 why they think the public needs to see an exhibit,
3 basically you -- you accept that, then, as -- as
4 sufficient?

5 A. Not just because they say so. But -- but in
6 the case of student artwork, I mean, that -- that seems
7 pretty clear to me, that it's -- it's a reasonable
8 expectation that visitors to the Capitol might want to
9 see artwork from students from Texas.

10 Q. But in terms of what gets displays -- you're
11 not necessarily responding to public demand, then, in
12 terms of what gets displayed, and what -- what people
13 apply for is -- is self-selected by the exhibitors.
14 Correct?

15 A. We don't -- we don't solicit people to come
16 display here at the Capitol. They have to apply for
17 it. Much as I'd like to take credit for some of these,
18 they -- they come to me.

19 Q. In terms of how you construe and apply the --
20 the public purpose test, then, in (A)(3) of the
21 policies, have -- is there anything -- is there
22 anything else that -- that you -- any other factors,
23 criteria, whatever, that you utilize in -- in
24 determining whether or not an exhibit satisfies the
25 public purpose requirement?

1 A. No. I mean, as far as the public purpose
2 requirement, that's -- that's all we look at, is the --
3 what's in the policies.

4 Q. Then in the -- in -- on page 4 of Exhibit 1 --
5 and I'm again looking in the -- under the criteria for
6 exhibit approval.

7 A. Uh-huh.

8 Q. Subsection 10 talks about exhibits will not be
9 considered for display if they --

10 A. Yeah. That's part -- I guess I consider that
11 to be included along with the public purpose. Because
12 we do sometimes receive applications where it seems
13 like it's, as I said before, someone looking for free
14 gallery space to display their own artwork for their
15 own promotion or commercial advancement.

16 Q. And that's what you referred to earlier
17 that -- one of the criteria that proposed exhibits not
18 basically have a commercial underpinning. Is that
19 correct?

20 A. Uh-huh.

21 Q. Subsection 10 also says "will not be
22 considered for display if they have no obvious public
23 purpose." Now, in terms of what you've already
24 described as -- in regard to your application of the
25 public purpose requirement, does that particular

1 provision, no obvious public purpose, add to your
2 answer in any way?

3 A. No.

4 Q. In terms of determining whether something
5 that -- lacks any obvious public purpose, is there
6 anything -- any specific -- anything specific that you
7 look for in that regard?

8 A. I mean, I -- I just -- mostly if I'm trying to
9 determine or get a gauge of someone's public purpose,
10 it's typically the first two criteria under item 10
11 that I'm looking at.

12 Q. Have you ever --

13 A. And it doesn't usually get to C or D.

14 Q. Okay.

15 A. But those would apply -- if someone, you know,
16 applied and had an illegal purpose for something, then
17 that would be one I would probably have a discussion
18 with my supervisors with.

19 Q. Have you ever rejected an application on the
20 grounds that it had no obvious public purpose?

21 A. I don't recall ever doing that. Like I said
22 earlier, we -- the first point of contact, someone will
23 usually kind of talk to me and give me information
24 about what they're trying to do. And if I tell them at
25 that time that I'm not sure if it's going to fly, a lot

1 of times they'll decide to go elsewhere to display it.

2 Q. And is that discussion generally focused on
3 the commercial aspect of it that you -- you've talked
4 about?

5 A. Or like if it's campaign related, we won't
6 allow that either. So that's typically where we're
7 going at the first point of contact.

8 Q. Okay. In other words, no -- no campaigning as
9 part of this process. Is that correct?

10 A. Uh-huh.

11 Q. Have you ever removed an exhibit after it was
12 approved but then for whatever reason -- have you been
13 involved in making a decision to have an exhibit
14 removed?

15 A. I have not been involved in the decision for
16 removing any exhibits.

17 Q. Have you been involved in the mechanics or
18 logistics of having a display removed?

19 A. Yes.

20 Q. And when?

21 A. The FFRF display.

22 Q. And that was a display that you had approved.
23 Correct?

24 A. Yes.

25 Q. And then -- and in fact that display was put

1 in place in the Capitol. Is that correct?

2 A. Yes.

3 Q. And in terms of damage to property or location
4 or obstruction or anything like that, there was no
5 problem with the -- with the FFRF exhibit. Correct?

6 A. No, not that I recall.

7 Q. Now, you were not involved in the decision to
8 remove that exhibit, but you said you were involved in
9 the mechanics or logistics of having it actually
10 removed. Is that correct?

11 A. That's true.

12 Q. How did that come about?

13 A. I was told by our executor director to go
14 remove the exhibit.

15 Q. And that would have been Mr. Sneed?

16 A. Yes.

17 Q. Had he ever asked you to remove an exhibit
18 prior to that?

19 A. No.

20 Q. Subsequent to that --

21 A. No.

22 Q. -- any other?

23 A. (Moving head side to side.)

24 Q. And did he -- how did he communicate that to
25 you, that -- with regard to the FFRF display?

1 A. I -- I remember that it was on the phone. He
2 had called me. But he may have walked by my office and
3 told me in person. I really don't remember.

4 Q. And what do you recall that he said?

5 A. He said, "I need you to take the exhibit
6 down."

7 Q. And did he say why?

8 A. No.

9 Q. Did you ask -- did you ask why?

10 A. No, I didn't ask him why.

11 Q. And did he tell you that the -- that Governor
12 Abbott had requested that it be removed?

13 A. After the fact, yeah.

14 Q. When Mr. Sneed communicated that he needs you
15 to take the exhibit down, did that -- did he express
16 that that should be done with some degree of urgency?

17 A. Uh-huh, yes.

18 Q. How did he -- what did he say?

19 A. I think he said "right now" or "as fast as you
20 can." I don't remember his wording, but it was --
21 urgency was expressed.

22 Q. And then what did you do?

23 A. I went with our public information officer and
24 removed the exhibit.

25 Q. Who was the public information -- I'm sorry.

1 What was the position?

2 A. Public information officer.

3 Q. Okay. Was that Mr. Caslins?

4 A. No. His name is Christopher Currens.

5 Q. Christopher what?

6 A. Currens.

7 Q. Oh, yeah. I said the wrong name.

8 A. Yeah.

9 Q. That's what I meant.

10 A. Okay.

11 Q. There are multiple consonants in it, at least.

12 The public information officer, what is
13 the -- what does that person do with regard to the
14 preservation board? What's his job?

15 A. You're going to have to ask him. I don't know
16 the details of his job.

17 Q. Pardon?

18 A. I don't know the details of his job.

19 Q. Okay.

20 A. Besides a vague understanding.

21 Q. Now, why did you involve him when you went to
22 remove the FFRF exhibit?

23 A. I -- what I recall is that he offered to go
24 with me.

25 Q. Was he in your office when Mr. -- when

1 Mr. Sneed asked you to remove it?

2 A. Or I was in his. I don't remember. But we
3 were -- yeah, we were together.

4 Q. Had Mr. Sneed asked you two to get together to
5 meet with him?

6 A. No. I don't -- I don't remember. I
7 don't . . .

8 Q. And then Mr. Currens, what did -- what did the
9 two of you do then?

10 A. We went and removed the exhibit.

11 Q. And did you have any discussion between
12 yourselves as you -- as you undertook that task?

13 A. I'm sure we talked about how we were going to
14 do it or where we were going to place the exhibit.

15 Q. Was there any discussion about why you were
16 being asked to remove that exhibit?

17 A. (Moving head side to side.)

18 Q. At the time that you were -- and you shook
19 your head, and I --

20 A. I mean, I don't remember --

21 Q. You know --

22 A. -- talking about that.

23 Q. And I was -- I was letting you get away with
24 it. The reason I -- the reason I do that is because in
25 terms of -- particularly with the court reporter,

1 getting the transcript, the head nods are --

2 A. Right. I understand.

3 Q. -- very difficult.

4 A. Yeah.

5 Q. And I was going along with you. I was
6 sleeping as well. So don't worry about it.

7 You said subsequently or after the fact
8 you had some discussion with Mr. Sneed about the FFRF
9 exhibit?

10 A. Uh-huh.

11 Q. Prior to that discussion when you -- when you
12 were in the process of removing it with Mr. Currens --

13 A. Currens.

14 Q. -- did you -- did you have any thoughts about
15 why -- did you have thoughts about why it was being
16 removed?

17 A. I think I -- I think I understood that the
18 governor's office was not favorable to the exhibit
19 and -- but I don't -- you know, any conversations like
20 that would have happened well over my head.

21 Q. Would have happened what?

22 A. Well over my head.

23 Q. Now, the governor, with regard to the
24 preservation board, what is his position?

25 A. He's the chairman of the board.

1 Q. How many persons are on the board, if you
2 know?

3 A. I think six, but I'm not -- I'm not completely
4 certain. I've never attended a board meeting or seen
5 one so . . .

6 Q. You've never attended a board meeting?

7 A. No.

8 Q. With regard to Governor Abbott as the -- being
9 the chair -- chairman of the preservation board, do you
10 know what his role is in regard to the operation of the
11 preservation board?

12 A. No.

13 Q. Has he, to your understanding, been directly
14 involved on any sort of regular basis in terms of --

15 A. I wouldn't know.

16 Q. Let me finish.

17 A. Okay.

18 Q. -- in terms of approving exhibits or displays?

19 A. I wouldn't -- I wouldn't know. I don't -- I
20 don't have contact with the governor's office outside
21 of -- if he's going to attend an event that I'm
22 scheduling, then I would coordinate with his advance
23 staff about his movements.

24 Q. But in terms of the governor, as far as you
25 know, providing input into the approval process, you --

1 you're not aware of him doing that. Is that correct?

2 A. I don't know. I -- I don't know who -- if
3 I -- if I give an application to my executive director
4 and say, "Hey, I would like some feedback or input on
5 this," I don't know who he shows it to.

6 Q. To your knowledge has the governor ever asked
7 to have any other display or exhibit removed from the
8 Capitol?

9 MS. MACKIN: Objection, form. You can
10 answer.

11 A. To my knowledge, no.

12 Q. Now, in terms of -- by the way, you're also
13 the coordinator for events. Is that correct?

14 A. That's correct.

15 Q. And then is there a similar process that you
16 go through, then, for event approval?

17 A. Yes.

18 Q. And are there certain -- what -- what public
19 spaces, basically, are you responsible for coordinating
20 events for?

21 A. Capitol grounds, Capitol rotunda.

22 Q. Is the process similar in terms of getting
23 approval for an event?

24 A. Yes, it's similar.

25 Q. Similar to what you go through with regard to

1 exhibits?

2 A. Yes, as far as an application, sponsorship,
3 policy -- set of policies.

4 Q. Do you have any rough estimate of how many
5 applications for exhibit displays that you have
6 reviewed and approved during your time as the
7 coordinator?

8 A. During my entire career as the coordinator,
9 I -- I don't know.

10 Q. Do you know on an annual basis about how many
11 applications you receive?

12 A. For total events and exhibits, it's about a
13 thousand every year.

14 Q. In terms of -- in terms of just exhibits, do
15 you know -- first of all, are there more events or
16 exhibits?

17 A. There's more events.

18 Q. Okay. And in terms of exhibits, on an annual
19 basis do you have a -- can you estimate how many
20 applications that you would approve?

21 A. On average I would say maybe 50, 40, something
22 like that. It's going to be a lot more in a session
23 year than an interim time.

24 Q. Going back to the FFRF exhibit, you said after
25 the fact you did discuss that removal with Mr. Sneed?

1 A. Yes.

2 Q. Is that correct?

3 And in relationship -- how many times
4 have you discussed that with Mr. Sneed?

5 A. I don't remember how many times.

6 Q. More than once?

7 A. I -- I would say so, yeah.

8 Q. And the first time that you would have
9 discussed it with him, then, in relationship to the
10 actual removal, when was that?

11 A. That day, the day that it was removed.

12 Q. Okay. So did he ask you -- was it that
13 morning or afternoon that he asked you to get it out?

14 A. I think it was in the afternoon.

15 Q. And then you -- you and Mr. Currens got it
16 removed --

17 A. That's --

18 Q. -- quite quick?

19 A. That's how I remember it, yes.

20 Q. And then did you go back to Mr. Sneed's office
21 to talk with him?

22 A. I seem to remember going back to Christopher
23 Currens' office, and we both spoke to John Sneed by
24 speakerphone.

25 Q. Did you initiate contact with Mr. Sneed?

1 A. I don't think I did.

2 Q. Okay. Were you in Mr. Currens' office, you
3 said?

4 A. I think so. I mean, it might have been my
5 office.

6 Q. Okay.

7 A. It's been --

8 Q. Well, my question --

9 A. -- a couple years.

10 Q. -- is, did Mr. Sneed initiate contact with you
11 and Mr. Currens, or vice versa?

12 A. No. I think he -- I think Mr. Sneed called
13 us.

14 Q. Okay. And -- and what did he say? What was
15 the nature of that -- or what did you guys talk about?

16 A. From what I recall it was -- he said something
17 about there was a letter that had been drafted or was
18 being drafted by the governor's office about the
19 exhibit.

20 Q. And -- and did he tell you the nature of the
21 letter?

22 A. Not -- not other than just a vague, you know,
23 the governor want -- wanted the exhibit taken down
24 and . . .

25 Q. Did Mr. Sneed say why?

1 A. I don't -- I mean, I think he might have said
2 that he felt like it was mocking or something, but I
3 really don't remember.

4 Q. And then did you say anything to Mr. Sneed at
5 that time about the FFRF display?

6 A. Would have just been nuts-and-bolts details
7 about, you know -- I mean, he and I had discussed the
8 application, so we didn't -- I didn't really need to
9 give him a whole lot of background about the FFRF.

10 Q. So in terms of the approval process, then,
11 initially was -- Mr. Sneed was -- was involved in that?

12 A. Yes.

13 Q. And -- and why did -- why was he involved
14 in -- in the approval process?

15 A. Because it was a -- as I saw it, a sensitive
16 display application, and I wanted some additional input
17 from him as well as others.

18 Q. And what -- what input did you get from
19 Mr. Sneed?

20 A. On the application --

21 Q. On the application, yes.

22 A. -- prior to approval? I don't really remember
23 at the time. I don't remember. But it was -- you
24 know, it was that it -- you know, part of it seemed
25 fine, but, you know, we were going to wait and see --

1 at the time when the application came in it was not
2 sponsored, so we were going to wait and see what was
3 sponsored.

4 Q. What was what?

5 A. We were going to wait and see if it got
6 sponsored.

7 Q. Okay. And it was properly sponsored.
8 Correct?

9 A. Yes, as I recall.

10 Q. And then once it was sponsored did you -- I
11 mean, did you -- did you personally talk with Mr. Sneed
12 about the application, then?

13 A. No. I think -- because when it was sponsored,
14 it came with a second -- it was applied for, a new
15 application came in different from the very first one.
16 So looking at that second application with the
17 sponsorship, I -- I would have talked with John Sneed.

18 Q. Okay.

19 A. And possibly others about it.

20 Q. And you would have -- you would have talked
21 with him directly, then --

22 A. Yes.

23 Q. -- about the FFRF, that second application?

24 A. (Moving head up and down.)

25 Q. And the second application basically differed

1 from the first one in terms of the sponsorship?

2 A. The sponsorship. The first application, I
3 think there was a different -- there was a different
4 sign -- banner that came with it.

5 Q. And that second application, then, did -- as
6 it came in, what -- do you recall what you discussed
7 with Mr. Sneed about that application?

8 A. Just would have been standard, just how does
9 this look, does this seem like something that we're --
10 you know, fits our public purpose criteria, fits all of
11 our other criteria.

12 Q. Did Mr. Sneed indicate that you should not
13 approve it?

14 A. No, not that I recall.

15 Q. Did he express any reservations about it?

16 A. I -- I mean --

17 Q. If you recall.

18 A. I recall -- well, I recall a reservation I
19 think probably between both of us in that, you know,
20 this is something that's, you know, controversial. But
21 as far as, you know, do we -- do we or do we not want
22 to approve it, I think that was pretty clear.

23 Q. Did you -- did you ask them to put some sort
24 of a disclaimer with their display?

25 A. I had suggested that a -- there was a previous

1 exhibit that had done a -- on their own they had done a
2 sign that said this -- I'm paraphrasing, but, you know,
3 it said, "We'd like to thank our sponsor" and "This
4 exhibit was not paid for by state funds. It was put up
5 blah-blah-blah-blah."

6 Q. And had you -- had you requested that type of
7 disclaimer?

8 A. I -- I thought it was a good -- I thought it
9 was a good complementary sign to go along with that
10 previous exhibit. And so since this one was similar, I
11 suggested it.

12 Q. And that previous exhibit was the Thomas More
13 nativity. Correct?

14 A. Yes.

15 Q. And with regard to the Thomas More nativity,
16 did you -- did you suggest some sort of a disclaimer to
17 them?

18 A. No. They offered it up, I think, at first --
19 first contact, I recall. I didn't need to suggest
20 anything like that.

21 Q. And you thought it was -- with regard to the
22 nativity display, you thought -- did you -- did you
23 think that that -- that that was a good complement to
24 the exhibit?

25 A. Sure. I -- I don't -- it's not something we

1 would require, but I -- you know, I'd like to see more
2 exhibitors do that, where they mention their sponsor
3 and mention that it's not the State Preservation
4 Board's exhibit; it's a public exhibit.

5 Q. Is that why you recommended it or suggested it
6 with regard to the FFRF display?

7 A. As I recall, that's why I did it, yeah.

8 I had -- you might not have been in the
9 room, but I had asked if we could take a break at 11:00
10 so I could go check on some events.

11 Q. Absolutely, yeah.

12 A. Okay.

13 Q. Yeah.

14 A. I may only need about 20 or 30 minutes but --

15 Q. That's fine.

16 A. Okay.

17 Q. That's fine.

18 A. It may be less than that too, but I've got
19 student performances that I need to go check on
20 so . . .

21 Q. Okay. That's not a problem.

22 A. Okay.

23 THE VIDEOGRAPHER: It's 10:56, we're off
24 the record. End of tape 1.

25 (Recess)

1 THE VIDEOGRAPHER: It's 11:37, beginning
2 tape number 2. We're on the record.

3 Q. Mr. Davis, when we took the break we were
4 just -- we were talking a little bit about what I
5 referred to as the disclaimer with regard to the FFRF
6 display, which you said you suggested and thought it
7 was a good idea. Is that --

8 A. Uh-huh.

9 Q. -- correct?

10 (Exhibit 2 marked)

11 Q. And I'm showing you what's marked as
12 Exhibit 2. And Exhibit 2 is an email to you -- by you
13 to Sam Grover at FFRF. Is that correct?

14 A. Uh-huh.

15 Q. And then in this email you indicate that -- in
16 the second paragraph, that you would be requesting
17 additional signage stating who the sponsor was as well
18 as that no state funds went into the facilitation of
19 the event -- or of the exhibit.

20 A. Uh-huh.

21 Q. Do you see that?

22 And you indicated that was in keeping
23 with what was required of the nativity scene. Correct?

24 A. Uh-huh.

25 Q. So you actually did request, then, that

1 that -- that a disclaimer be included with the FFRF
2 display. Correct?

3 A. Yes.

4 Q. And -- and was FFRF agreeable to that?

5 A. Yes, as I recall.

6 Q. Is it -- is it fair to say that in terms of
7 how you approached your job as the coordinator for
8 events and exhibits, that -- that the preservation
9 board follows a policy of allowing diverse viewpoints
10 to be expressed in Capitol displays?

11 A. I'm sorry. Can you --

12 Q. As you -- as you've applied and utilized the
13 standards that you use to process and approve displays,
14 do you follow a policy of allowing diverse viewpoints
15 to be expressed in Capitol displays?

16 A. I -- I believe that we do.

17 Q. Did you request any substantive changes to the
18 FFRF display before approving it?

19 A. Not that I recall.

20 Q. We talked about -- earlier about your
21 conversation with Mr. Sneed after you removed the FFRF
22 display, which you thought was probably on the same day
23 as you and Mr. Currens removed it. Correct?

24 A. I think so.

25 Q. Did you have any subsequent discussions with

1 Mr. Sneed about the FFRF display?

2 A. I'm sure in passing.

3 Q. Do you recall anything specific?

4 A. No.

5 Q. Has there been -- and in terms of how you
6 approach applications for events or displays, have
7 there been any change in -- in your -- in the policy or
8 practices that you follow?

9 A. Not -- not particularly, no.

10 (Exhibit 3 marked)

11 MR. BOLTON: And I apologize. I didn't
12 bring an extra one here.

13 Q. Exhibit 3 is a letter dated December 22, 2015
14 by Governor Abbott to Mr. Sneed. Have you seen that --
15 have you seen that letter before?

16 A. I have seen this before.

17 Q. When was the first time that you saw it?

18 A. I don't really recall. Must have been a
19 couple of days after. I don't really recall, though.

20 Q. Okay. Do you recall how it -- how you -- how
21 it came to you?

22 A. The -- the recollection I have is that John
23 Sneed's assistant brought it to my office, a hard copy.

24 Q. Okay. And did you know about the letter prior
25 to the assistant bringing it?

1 A. Yes. I think I had said earlier that -- that
2 day that John Sneed had mentioned to me that there was
3 either a letter that had been drafted or was being sent
4 out or something, that there was a letter, was what was
5 my understanding. So I believe I heard about it, but I
6 didn't see it --

7 Q. Okay.

8 A. -- immediately.

9 Q. Did you ever discuss the letter specifically
10 with anybody at the preservation board?

11 A. If I did at all, it would have been just in
12 passing, you know. Somebody maybe saying, "I heard
13 about that" or something. I don't know. But I
14 didn't -- we didn't have an internal meeting about this
15 letter, that I recall.

16 Q. Did you -- did you read the letter?

17 A. I have read it, yes.

18 Q. Okay. And this was the letter in which
19 Governor Abbott requested that the display be removed.
20 Is that correct?

21 A. Yes.

22 Q. And in the letter he cites -- quotes some
23 administration code section. Are you familiar with the
24 code section that he quotes in the first page of this
25 letter?

1 A. I'm familiar with some of it, yes. Our
2 policies come from the administrative code so . . .

3 Q. And the section that he -- that he quotes
4 deals with the public purpose requirement.

5 A. Uh-huh.

6 Q. Correct?

7 A. Yes.

8 Q. And the first sentence of the -- of the
9 administrative code section that says, "The promotion
10 of the public health, education, safety, morals,
11 general welfare, security, and prosperity of all of the
12 inhabitants or residents within the state" is -- is
13 identified as the standard for promoting a public
14 purpose. Is that correct?

15 A. Yes.

16 Q. In terms of -- well, does that -- has that
17 language -- have you utilized that language or
18 interpreted that language at all in terms of how you
19 approach the -- the process for approving applications
20 for events or display?

21 A. This language? I mean, I don't regularly
22 review that section of the administrative code --

23 Q. Okay.

24 A. -- to implement that language. I -- I stick
25 with what's in our policies.

1 Q. Okay. Where it says -- in terms of promoting
2 morals or general welfare, is that a -- is that a
3 factor that -- that you utilize in making decisions?

4 A. No. I usually use what's in our policies,
5 which is direct interest, community at large to be
6 benefited.

7 Q. Okay. In his -- in his letter, Governor
8 Abbott indicates that the FFRF display does not promote
9 morals and the general -- general welfare. Do you see
10 that language?

11 A. Uh-huh.

12 Q. Do you know -- in terms of whether a display
13 promotes morals and general welfare, is that a -- is
14 that a criteria or factor that you specifically utilize
15 in your decision-making?

16 A. No.

17 Q. So for instance, in terms of the defining
18 morals that would be promoted, that's not something
19 that -- that you think about or try to apply in your
20 decision-making?

21 A. Not particularly. I don't -- you know, if it
22 was -- like I said, if it's a sensitive enough
23 application, then I'll -- I will request some
24 additional input from others within our agency.

25 Q. Do you have any -- any working definition of

1 morals?

2 A. No.

3 Q. How about general welfare?

4 A. No.

5 Q. In the second page of Governor Abbott's letter
6 he indicates that the exhibit does not educate.

7 A. Uh-huh.

8 Q. Do you see that?

9 A. Uh-huh.

10 Q. And when you process applications for events
11 or display, is -- is that a criteria that you utilize
12 in your decision-making, whether a -- whether a display
13 educates?

14 A. No. I don't believe that's one of our --
15 that's in our policies.

16 Q. Toward the bottom of the second page of
17 Governor Abbott's letter he states that the general
18 public does not have a direct interest in the Freedom
19 From Religion Foundation's purpose. He indicates that
20 the organization is plainly hostile to religion and
21 desires to mock it or, more accurately, to mock our
22 nation's Judeo -- Judeo-Christian heritage. He goes on
23 to say, "But it is erroneous to conflate the
24 foundation's private purpose with the public's
25 purpose." Do you see that language?

1 A. Uh-huh.

2 Q. When you -- when you evaluate applications
3 for -- for displays, frequently the purpose is a
4 purpose that is unique to the applicant. Isn't that
5 true?

6 MS. MACKIN: Objection, form. You can
7 answer.

8 A. I mean, a lot of times, the -- I wouldn't say
9 the purpose is unique to the applicant. A lot of times
10 they -- these exhibits -- they're all pretty uniform in
11 their public purpose. I referenced student art. You
12 know, that's so that the community can see what
13 students from District XYZ are doing these days in
14 their schools. Or the exhibit I have now is from the
15 Historical Commission about the Nimitz Museum.
16 That's --

17 Q. About the what?

18 A. The Nimitz Museum. Their public purpose would
19 just be to, you know, inform the public about, you
20 know, what --

21 Q. With regard to the nativity scene --

22 A. Yes.

23 Q. Is it your understanding, then, that --
24 that -- I mean, my understanding is that the nativity
25 that was approved was not part of a large secular

1 display. Is that correct?

2 A. You're talk -- you're speaking about the
3 Thomas More exhibit?

4 Q. Yes, sir.

5 A. Yes. It was its own --

6 Q. Stand-alone --

7 A. -- display, yes.

8 Q. And did you understand that -- that the
9 purpose of the -- of the applicant was to promote the
10 Christian aspect of -- of Christmas?

11 A. I'd have to go back and look at what their
12 application says.

13 Q. You have no recollection?

14 A. I don't remember exactly what language they
15 said, if they said they were just displaying it for
16 those -- for people to see, or if they were displaying
17 it to further any kind of message.

18 Q. Would you equate, then -- and we'll go --
19 we'll -- we'll go and look at it. But would you --
20 would you equate the applicant's purpose with the --
21 with the nativity to basically the general public's
22 purpose, that basically all -- everybody would have a
23 similar interest in -- in the nativity?

24 A. Oh, I wouldn't say everybody. But our
25 language says community at large so . . .

1 Q. And again I go back, then. When you say
2 community at large, is there some sort of numerosity or
3 percentage test that you use to determine whether or
4 not the community at large would -- there would be a
5 sufficient --

6 A. No, I don't. But the governor might. He's a
7 statewide affected -- elected official. He might have
8 a finger more on the pulse of what the public
9 determines to be . . .

10 Q. Okay. And in terms of that finger on the
11 pulse and that determination of -- of the public
12 purpose, is it your understanding, then, that that is
13 the governor's role in terms of the preservation board
14 and the approval process, that basically it's -- it's
15 his perception or perspectives as to exhibits that
16 determines?

17 A. I don't -- I don't know if that's understood
18 within our policies, but he is the chairman of the
19 board. It seems like it's something that's his
20 prerogative if he disagrees with an exhibit having been
21 approved.

22 Q. Did -- did Mr. Sneed ever then subsequently
23 criticize you for having approved the FFRF display?

24 A. No. Because I wasn't alone in approving it.
25 Our agency approved it.

1 Q. And specifically Mr. Sneed?

2 A. I mean, no -- there's no -- there's no one's
3 name signed on an approval sheet or anything, but we
4 had internal meetings about it.

5 Q. You had what?

6 A. We had internal meetings about the FFRF
7 application. And the agency decided to approve it.

8 Q. And who would have been involved in the
9 decision-making, then?

10 A. Within our agency?

11 Q. Yes.

12 A. It was myself, our staff attorney, public
13 information officer, Mr. Sneed. There may have been
14 some others, but that's --

15 Q. How many --

16 A. -- that's who --

17 Q. How many meetings do you recall?

18 A. I don't recall how many.

19 Q. And were these meetings before or after FFRF
20 submitted a second application with a different
21 sponsor?

22 A. I don't remember. I think largely they were
23 after the second application. Because if something
24 hasn't been sponsored, we don't -- I don't make a point
25 to review applications that haven't been sponsored

1 because it's incomplete at that point.

2 Q. Okay. And what was the nature of the
3 discussion in these -- these meetings that you're
4 talking -- that you reference?

5 MS. MACKIN: To the extent that this was
6 receiving advice from your staff attorney as the
7 preservation board, I'm going to instruct you not to
8 answer based on the attorney-client privilege.

9 THE WITNESS: Okay.

10 MS. MACKIN: To the extent you can answer
11 outside of that, please do answer the question.

12 A. Okay. Could you ask again?

13 MR. BOLTON: Can you read the question
14 back?

15 (Requested portion was read)

16 A. The nature was just whether or not it flew
17 within our policies and, you know, size restrictions,
18 you know, the typical logistical details, and dates
19 available.

20 Q. And what?

21 A. And dates available.

22 Q. Was there anything else that you recall being
23 discussed in particular about the FFRF display, then?

24 A. No.

25 Q. And a decision was made, then, by the

1 decision-makers involved to approve that application.
2 Is that correct?

3 A. I don't know if it was made immediately at
4 that point, but at some point soon after, John Sneed
5 told me, "Good to go. We can approve that one."

6 Q. Who did?

7 A. John Sneed.

8 Q. Has Mr. Sneed ever subsequently expressed any
9 remorse as to his decision to okay that display?

10 A. Not to me particularly.

11 Q. Are you aware from any -- from any other
12 source that he's expressed any -- any remorse?

13 A. I'm not aware.

14 Q. Now, FFRF indicated that the purpose of -- of
15 their display was to educate the public and celebrate
16 the 224th anniversary of the ratification of the Bill
17 of Rights on December 15, 1791, and also to celebrate
18 the winter solstice on December 22nd and to educate the
19 public about the religious and nonreligious diversity
20 within the state.

21 Is that -- is that a purpose that fits
22 within your guidelines?

23 A. May I see it so I know which --

24 Q. Yeah.

25 A. We approved it, so I -- I think that sounds

1 like a good public purpose. I don't know if it really
2 educates. There wasn't a whole lot of information
3 about -- I mean, it was just a standing and then the
4 complementary sign so . . .

5 Q. But that's not pretty unique to the FFRF
6 display, is it, in terms of the educational aspect?

7 A. Yeah.

8 Q. Because for instance, the slam-dunk approvals
9 for art displays, for instance, those wouldn't have any
10 clearly defined educational purpose. Right?

11 MS. MACKIN: Objection, form. You can
12 answer.

13 A. I -- I don't know. If you're an art student,
14 you might glean some kind of technical details off of
15 that. But oftentimes the art displays are not -- they
16 don't define their public purpose as to educate.

17 Q. How about with regard to the nativity? Can
18 you -- is there an educational purpose for that that
19 you can discern?

20 A. Which nativity? The --

21 Q. The Thomas More nativity.

22 A. I guess if someone was religious, maybe. But
23 I don't -- I don't know if I necessarily see an
24 educational purpose.

25 (Exhibit 4 marked)

1 Q. With regard to what we marked as Exhibit 4,
2 does that appear to be the application by FFRF?

3 A. Yes. This is what I recognize as the second
4 application that came in. But there's no sponsorship
5 form with this one, with this particular --

6 Q. Was Donna -- Donna Howard, is that --

7 A. Yes.

8 Q. She was the ultimate sponsor, though.

9 A. Yes.

10 Q. Correct?

11 And on the second page of Exhibit 4,
12 then, there's a statement of purpose, as I -- as we
13 were just discussing. Is that correct?

14 A. Uh-huh.

15 Q. And that would seem to fit within the agency's
16 or the board's -- the preservation board's guidelines.
17 Is that --

18 A. Yes.

19 Q. -- correct?

20 (Exhibit 5 marked)

21 Q. And then is Exhibit 5 the sponsorship by
22 Donna --

23 A. It appears to be, yes.

24 Q. Okay.

25 MR. BOLTON: Did I give everybody the

1 same thing?

2 MS. MACKIN: I'm just wondering why
3 they're not -- it appears that this -- that the
4 sponsorship page would have been attached to a
5 different application, since this is labeled page 22 of
6 83, and then the application that Mr. Davis is looking
7 at is labeled page 23 through 25 of 83. I just know
8 that there were a lot of --

9 MR. BOLTON: Right.

10 MS. MACKIN: -- several iterations of
11 this, so I want to make sure we're . . .

12 A. Yeah. I think this is maybe the difference
13 here, this notation that I made.

14 Q. When I -- when I was going through -- I know
15 there was an earlier application of July 7th of 2015.
16 And I think the one that I gave you, Mr. Davis, is July
17 20th, if I'm not mistaken.

18 A. Yes.

19 Q. Correct?

20 And it's your recollection that -- that
21 Ms. Howard was actually the sponsor?

22 A. Yes. There was a second application that was
23 submitted with the sponsorship, but they included dates
24 which we did not have available.

25 Q. There was no question, though, that the

1 application that you finally evaluated included an
2 appropriate sponsorship. Is that correct?

3 A. Yes. That's correct.

4 Q. Did you -- how long was the FFRF display
5 actually up in the Capitol before -- before you took it
6 down?

7 A. I believe it was installed on December 18th,
8 and I believe it would have come down on this date,
9 December 22nd.

10 Q. Do you --

11 A. That's my recollection.

12 Q. Okay.

13 A. I'd have to go to notes to see when it was
14 actually --

15 Q. While it -- while it was up, prior to it
16 coming down, did you receive any complaints or comments
17 or anything at all about that display?

18 A. Not about the substantive nature of it.

19 Q. Okay. When you say --

20 A. People said, "Oh, I thought it would be
21 taller" or, you know, something like that.

22 Q. Okay. In terms of the governor's objection to
23 the -- to the display, did you -- other than what
24 Mr. Sneed told you and the letter from the governor
25 that you saw, did you see any -- or were you aware of

1 any other sources in which the governor expressed his
2 displeasure about the --

3 A. No.

4 Q. -- the display?

5 A. I hadn't heard anything about it.

6 (Exhibit 6 marked)

7 Q. Okay. And with regard to Exhibit 6, have you
8 ever seen -- have you ever seen -- I believe these were
9 tweets by the -- by the governor regarding the -- the
10 display.

11 MS. MACKIN: We're going to object to
12 this. I have no way to verify authenticity. Unless
13 the witness has seen it before.

14 A. I don't recall seeing this --

15 Q. Okay.

16 A. -- before. I don't have a Twitter account or
17 anything.

18 Q. I thought I was the only one that didn't.

19 After -- well, after -- after you took it
20 down, the FFRF display, did -- did you or the -- the
21 agency receive any comments, criticisms, complaints, or
22 anything?

23 A. Those would have gone to the public
24 information officer, not to -- I don't recall getting
25 anything specific about that. You know, no voice

1 messages or anything.

2 Q. Is Mr. Currens still the public information
3 officer?

4 A. I believe so.

5 Q. Did Mr. Sneed, then, after -- after this
6 situation with the FFRF display, ever indicate that --
7 that you should follow any different policy -- or that
8 the agency should follow any different policy or
9 practice in regard to evaluating applications for
10 exhibits?

11 A. I don't recall anything like that.

12 MR. BOLTON: What are we up to? 7?

13 THE REPORTER: Yeah, 7.

14 Q. Now, FFRF subsequently submitted an
15 application for a display for 2016 as well. Is that
16 correct?

17 A. Yes.

18 Q. And were you at all involved in the processing
19 of that application?

20 A. Yes.

21 Q. And how did that -- how did that go about,
22 then?

23 A. I received it without any kind of first
24 contact. Like I said, a lot of times someone will call
25 me and we'll discuss what's even available before they

1 get too far along in the process. It just was an email
2 to me by a woman with FFRF. I think her last name was
3 Gaylor. And I printed it and I went and talked to our
4 staff counsel about it, staff attorney.

5 Q. Staff attorney?

6 A. Yes.

7 Q. Okay. And did you talk with Mr. Sneed about
8 it?

9 A. I think my -- my -- the first -- I might have
10 gone to him, but I don't -- he might not have been
11 here, so I think I went down to the staff attorney
12 first.

13 Q. And what was your reason for going to the
14 staff attorney?

15 A. Just, you know, here -- here -- here we are
16 again. You know, we'll -- "I'll need some guidance on
17 what to -- to do moving forward on this."

18 I probably would have mentioned at that
19 time that those -- the dates applied for in that 2016
20 application weren't available.

21 Q. Was that your only concern?

22 A. Well, at that point if it's not available, I
23 don't need to be concerned about what's in the
24 application --

25 Q. Okay.

1 A. -- if the dates aren't available.

2 Q. Fair enough.

3 A. So . . .

4 Q. Okay. And if a date's not available, do you
5 generally talk with the agency counsel?

6 A. No. But since this was FFRF, I didn't -- you
7 know, I wanted to make sure -- if I -- if I'm going to
8 go back to them and say, "Hey, dates aren't available,"
9 you know, "Is that what I need to say and do," you
10 know.

11 Q. And then did you have any further involvement
12 in the processing of that application?

13 A. I didn't see it again for some time, I -- or
14 hear about it. I think John Sneed took it from -- from
15 there --

16 Q. Okay.

17 A. -- in a sense, yeah.

18 Q. And what did -- what did Mr. Sneed do from
19 there?

20 A. I don't know.

21 Q. Did he ever tell you whether --

22 A. No. I mean, I -- I believe we -- I did send
23 an email back to them saying -- back to FFRF saying,
24 "These dates aren't available. Thanks for your
25 application." I don't remember exactly what I said

1 but . . .

2 (Exhibit 7 marked)

3 Q. With regard to Exhibit 7, which appears to be
4 a letter by Mr. Sneed to Donna Howard dated August 18
5 of 2016 -- have you seen this letter before?

6 A. I believe I have, yes.

7 Q. And this was a letter by Mr. Sneed. Correct?

8 A. Yes.

9 Q. And in addition to indicating that the -- the
10 dates aren't available, does Mr. Sneed also indicate
11 that -- that the preservation board will not approve a
12 display substantively that was the same as in 2015?

13 A. I'm going to have to refresh my memory and
14 read it again here. (Reviews document.)

15 It looks like in paragraph 3 he says that
16 applications that do not promote a public purpose will
17 be rejected, and then he goes on to emphasize in the
18 fourth paragraph about the governor's viewpoint, from
19 his letter.

20 Q. And in the last paragraph, then, of the letter
21 he says, "Our position in this matter has not changed
22 since the governor wrote to me," Mr. Sneed, "last
23 December, calling for the removal of FFRF's pejorative
24 exhibit."

25 The -- the agency's position, then, in

1 terms of -- I mean, your -- your position initially had
2 been to approve the -- the display. Correct?

3 A. Right.

4 Q. So the agency's position did change, though,
5 after the governor wrote in -- in December of 2015?

6 A. Well, he's the chairman of the board of the
7 agency so . . .

8 Q. Did -- in terms of how you were directed to
9 process applications or how Mr. Sneed or the public
10 information officer or others were involved, were you
11 aware of any -- any -- any position change at that
12 level in terms of the criteria that would be applied to
13 applications for exhibits?

14 A. Nothing as relates to our policies but . . .

15 Q. When was the first time that the preservation
16 board approved a nativity scene display in the Capitol?
17 Was that the -- 2014?

18 A. I -- I don't know about the first time ever,
19 but the first one since I had been here would -- would
20 have been the 2014 --

21 Q. Okay.

22 A. -- Thomas More Society.

23 (Exhibit 8 marked)

24 Q. And then -- and this isn't -- it's a smaller
25 picture than I would have liked, but do you recognize

1 Exhibit 8 as the -- the Thomas More --

2 A. Yes.

3 Q. -- exhibit?

4 A. Yes.

5 Q. Was there any consideration with that
6 application of requiring that -- that it be included in
7 a larger, more secular holiday display?

8 A. Not that I recall.

9 Q. Has there ever -- have you had any discussion
10 at the preservation board in terms of how to handle
11 religious displays?

12 A. Have I had what?

13 Q. Within the -- within the people that you work
14 with at the preservation board, has there been any
15 discussions that you've been involved in about how to
16 handle applications for religious displays?

17 A. Like as a new rule or --

18 Q. Or application of existing rules or --

19 MS. MACKIN: And I'm going to again
20 instruct you not to answer to the extent that those
21 discussions were had with the board's attorneys.

22 THE WITNESS: Okay.

23 MS. MACKIN: To the extent you can answer
24 outside of that context, please answer the question.

25 A. I don't really recall that we've had any

1 discussions about exhibit -- reviewing exhibit
2 applications in a new way moving forward.

3 Q. Okay. Have you seen holiday displays that
4 include a nativity or a menorah that are included as
5 part of a larger holiday display?

6 A. I don't recall having a large secular exhibit
7 with different booths of different religions as one
8 display. But we've had other religious --

9 Q. And my question wasn't --

10 A. Sorry.

11 Q. -- necessarily limited to -- in terms of what
12 the preservation board has approved for Capitol
13 displays. But just in -- in your own personal
14 experience --

15 A. Oh.

16 Q. -- have you seen such displays?

17 A. No. Or if I have seen them, I haven't paid
18 attention to them.

19 Q. What do you recall about the Thomas More
20 application?

21 A. I recall that we received an email, and I
22 believe it had -- did not have an application attached
23 to it but it was -- the body of the email had a request
24 that they be able to put the display up. And there was
25 a -- attached was some supplemental PDFs of court cases

1 and things that they had had in other states. And I
2 didn't review those documents but . . .

3 Q. And with regard to --

4 A. Or it may have had the application attached to
5 it at that time as well. I really don't remember.

6 (Exhibit 9 marked)

7 Q. With regard to Exhibit 9, does that -- does
8 that appear to include the -- the email from 2014 that
9 you were describing?

10 A. Yes. And this -- yeah. It appears that it
11 came to John Sneed and his assistant first, and then I
12 saw -- I was forwarded the email later.

13 Q. And in that -- in Exhibit 9, there's --
14 Mr. Sneed indicates that he wants to have a meeting.

15 A. Uh-huh.

16 Q. What do you recall about that -- that meeting?

17 MS. MACKIN: And I'm going to instruct
18 you, with respect to the attorney-client privilege to
19 the extent that the board's attorney was present and
20 you were receiving legal advice --

21 THE WITNESS: Right.

22 MS. MACKIN: -- to not the answer the
23 question. To the extent you can answer --

24 THE WITNESS: Okay.

25 MS. MACKIN: -- without providing that

1 information, please do so.

2 A. What I recall about that meeting was I did a
3 lot of listening and not a lot of talking. I think
4 John and the staff attorney mostly spoke. I might have
5 weighed in as to availability of dates or certain -- or
6 particular spaces or, you know, a general history of,
7 you know, had we had -- someone had asked me had we had
8 this exhibit before, something like that, so . . .

9 Q. Who -- who was at that meeting?

10 A. I don't recall, but it says here he's asking
11 to meet with Kasey Ellars, myself, and Christopher
12 Currens.

13 Q. And was this, in your experience, an unusual
14 meeting?

15 A. No.

16 Q. And what was the -- what was the result of
17 that meeting? Any decisions made?

18 A. I don't think -- at this first meeting, I
19 don't think there were decisions made. We might have
20 met again.

21 Q. Was there any discussion about whether or not
22 it was appropriate or not to -- to approve a
23 stand-alone nativity?

24 A. I don't remember if there was a question as to
25 appropriateness.

1 Q. Other than availability of dates,
2 substantively was there any discussion about the
3 appropriateness or otherwise, any other substantive
4 discussion regarding the exhibit?

5 MS. MACKIN: And I'm just going to repeat
6 the attorney-client privilege instruction.

7 THE WITNESS: Yeah.

8 MS. MACKIN: To the extent you were
9 receiving the advice of your attorney, to not answer;
10 and to answer to the extent you recall other than that.

11 THE WITNESS: Okay.

12 A. I -- the first meeting all -- all I really
13 remember from it was we discussed do we have space
14 available and have they completed the application
15 requirements, which it doesn't -- I mean, this looks
16 like this is just a body of an email so they hadn't
17 actually applied yet --

18 Q. Okay.

19 A. -- if I'm remembering correctly.

20 Q. Were there subsequent meetings, then, to
21 consider the Thomas More application?

22 A. That -- there certainly would have been.

23 Q. And do you remember how many meetings there
24 would have been before approval was granted?

25 A. I don't remember how many.

1 Q. And was there discussion at the subsequent
2 meetings as to the substantive propriety of approving a
3 nativity display?

4 MS. MACKIN: And I'm going to again
5 repeat the attorney-client instruction, which you know
6 by now.

7 THE WITNESS: Yeah.

8 A. I don't remember anything like that so . . .

9 Q. Do you recall whether there was any discussion
10 as to whether the nativity satisfied the public purpose
11 requirement for a Capitol display?

12 A. I -- I recall that I would have deferred to
13 John Sneed.

14 Q. That what?

15 A. That I would have deferred to John Sneed on
16 having that discussion. I'm not religious so I
17 don't . . .

18 Q. Were you party to any discussion, though,
19 within the agency as to whether or not the nativity
20 satisfied the public purpose?

21 A. Not that I recall.

22 (Exhibit 10 marked)

23 Q. Exhibit 10, does that appear to be the -- the
24 actual 2014 application, then?

25 A. Without its sponsorship form, yes.

1 Q. And eventually there was a sponsorship
2 provided. Correct?

3 A. Yes.

4 Q. And what did -- what did the Thomas More
5 Society indicate was the -- the public purpose?

6 A. Citizen's exercise of free speech.

7 Q. And was there any discussion within the agency
8 about that particular stated purpose?

9 A. I'm sure there was, but I don't recall. I
10 don't recall what was discussed. And like I said, some
11 of this -- quite a bit of it probably went above my pay
12 grade, as they say.

13 Q. When you were processing this application, did
14 you note that as -- that particular description of
15 purpose?

16 A. Yes.

17 Q. And in fact, the Thomas More Society was --
18 was actually lobbying for approval of their nativity
19 display on the basis that this was a First Amendment
20 right. Correct?

21 MS. MACKIN: Objection, form.

22 Q. Is that correct?

23 A. It seemed like it, yes.

24 Q. And in terms of citizens' exercise of free
25 speech, what did -- did that mean anything to you as

1 you processed this application?

2 A. I mean, like I said, I'm not religious, so it
3 seems like somebody who, you know, believes they're
4 exercising their free speech by displaying a nativity
5 scene. You know, I -- I'm not really sure.

6 Q. Okay. In terms of exercising citizens' rights
7 of free speech, in terms of the Capitol space that you
8 oversee, basically, was that consistent with your
9 understanding, then, of -- of the use of that space?

10 A. Yeah. We get a lot of exhibits that are --
11 that's -- that's their purpose.

12 Q. That what?

13 A. We have a lot of exhibits that that is their
14 purpose as well.

15 (Exhibit 11 marked)

16 Q. Exhibit 11, is that -- is that a document that
17 you're familiar with?

18 A. Yes.

19 Q. And can you identify it for us, tell us what
20 it is.

21 A. It's an internal cover sheet that I put on
22 every event and/or exhibit application. The
23 application that is sponsored and approved is stapled
24 to the back. This cover sheet is usually color-coded.
25 In this instance for an exhibit it would be pink; that

1 way, if I'm thumbing through the files, I get to the
2 pink ones for that date, and it helps me find them
3 easier. And also obviously I write notes and things on
4 the front of it as well.

5 Q. So Exhibit 11 includes a handwritten note that
6 says "signage."

7 A. Uh-huh.

8 Q. Do you see that?

9 A. Yes.

10 Q. And is that your handwriting?

11 A. Yes.

12 Q. And this relates to the disclaimer that you
13 were requesting from --

14 A. I didn't request it from Thomas More Society.
15 I -- that's -- it wasn't mentioned on their application
16 that they were going to have a complementary sign, so I
17 put that as a note that that's just to remind me that,
18 hey, they're going to also have a sign with it. But
19 that doesn't indicate that I'm requesting a sign from
20 them. Because Thomas More, their sign, they -- they
21 came to me with that one, and I thought it was a dandy
22 idea.

23 (Exhibit 12 marked)

24 Q. Is Exhibit 12 the sponsorship form for the
25 Thomas More exhibit?

1 A. It looks to be that.

2 Q. And again, it states that the purpose of the
3 event is citizen exercise of free speech?

4 A. Yes.

5 Q. And again you consider that to be an
6 appropriate public purpose for --

7 A. Our agency did.

8 MS. MACKIN: Objection, form.

9 THE WITNESS: Sorry.

10 A. Our agency did.

11 Q. Was there any -- do you recall any discussion,
12 then, with -- with John Sneed or anyone other than
13 counsel as to that -- that citizens' right of --
14 exercise of First Amendment rights?

15 A. I don't recall anything. I -- no. It was --
16 no doubt it was talked about, but I don't recall.

17 Q. And is it -- is it fair to say that with the
18 Thomas More display as well as other displays, that you
19 make a point that the sponsorship of the -- of the
20 display be separated from the agency itself; in other
21 words, the agency is not the sponsor of the displays?

22 A. Right.

23 Q. And that's true of all the displays. Right?

24 A. Yes.

25 (Exhibit 13 marked)

1 Q. And Exhibit 13 looks to be an email by
2 Mr. Currens to someone at the Dallas news. Is that
3 correct?

4 A. Uh-huh.

5 Q. And was there -- do you know anything about
6 this particular follow-up with -- with the reporter?

7 A. No.

8 Q. Mr. Currens, though, notes that the Thomas
9 More Society is the organization responsible for this
10 exhibit.

11 That's consistent with what we were just
12 talking about, though, that -- that the preservation
13 board is not the sponsor of any of these displays,
14 including the nativity?

15 A. Any of these ones as applied for. We do --
16 our curatorial staff does from time to time do exhibits
17 that are artifacts from the Capitol on display. Those
18 are ours but . . .

19 Q. Was there any -- in 2014 was there any -- did
20 you get any response from the public, from people
21 complaining or --

22 A. I -- I --

23 Q. -- complimenting?

24 A. I think -- from which year? 2014?

25 Q. Yeah, the first year.

1 A. I had a few phone calls. I would have
2 forwarded those to Mr. Currens. But they were mostly
3 people saying -- expressing that they were happy about
4 the Texas Capitol finally putting -- having a nativity
5 on display. I don't recall anyone being outraged on my
6 voicemail.

7 Q. And did they -- did they say why they were
8 pleased with -- with the display?

9 A. I don't remember what -- what they said. I
10 just remember that it was a couple that were pleased
11 about it.

12 Q. Is it fair to say that -- well, do you -- in
13 terms of the governor's evaluation of the FFRF exhibit,
14 have you ever been -- has anyone ever asked you
15 whether -- whether or not you agree or disagree with
16 the governor's position?

17 A. I'm sure -- anyone at the preservation board
18 or just my wife, for instance?

19 Q. Well, how about your wife?

20 A. Oh, she -- she definitely doesn't agree with
21 the governor's position on the nativity scene. But
22 that doesn't affect my job.

23 Q. I understand.

24 A. Okay.

25 Q. But with regard to your position at the

1 preservation board, has -- has anyone asked you whether
2 you agree or disagree with the governor's position?

3 A. No, I don't recall anyone asking me about
4 that.

5 Q. Do you know whether -- has Mr. Sneed -- or did
6 Mr. Sneed ever indicate that he agreed or disagreed
7 with the governor's --

8 A. I don't remember if he -- if he said that or
9 not --

10 Q. Was --

11 A. -- to me.

12 Q. Go ahead.

13 A. I don't remember if he had said that to me or
14 not. I . . .

15 Q. Was there any reaction to the removal of the
16 FFRF display that you became aware of?

17 A. I -- I think there was an email or two that
18 came into the Capitol Events email repository and, you
19 know, some people expressing displeasure about that.

20 Q. And there was a fair amount of media coverage
21 of the event -- of that action. Correct?

22 A. Of the --

23 Q. Removal.

24 A. -- exhibit being removed? There was media
25 coverage. I -- yeah.

1 Q. Was there media coverage of the -- the display
2 of the nativity scene in 2014?

3 A. I believe there was.

4 Q. And do you recall that the -- the sponsors of
5 the -- of the display indicated that their purpose was
6 to put Christ back in Christmas?

7 MS. MACKIN: Objection, form.

8 A. I didn't -- the purveyors of the display --
9 would they make that announcement to the media? Is
10 that what you're --

11 Q. Right.

12 A. -- asking?

13 Q. Yes.

14 A. I don't know. I --

15 Q. Okay.

16 A. -- don't watch the news very often.

17 Q. What is your understanding of how the nativity
18 satisfies the public purpose requirement for the -- of
19 the preservation board?

20 MS. MACKIN: Objection, form.

21 THE WITNESS: I'm still answering this?

22 MS. MACKIN: Yes.

23 THE WITNESS: Okay.

24 MS. MACKIN: I'm sorry. Answer unless I
25 instruct you not to.

1 THE WITNESS: Okay.

2 A. My understanding, apart from, you know, the
3 citizen exercise of free speech, it does seem like
4 there's a -- always seems to be a public conversation
5 about the role of religion or of the separation of
6 church and state on either side of that conversation.

7 Q. And in terms of, you know, the general
8 public -- direct interest of the general public and
9 those types of considerations, how -- do you have any
10 understanding how -- how the nativity -- I mean, did
11 you consider any of those aspects when you and -- and
12 others at the agency decided to approve the nativity
13 display?

14 MS. MACKIN: Objection, form.

15 A. I -- I might have considered them. But, you
16 know, my opinion about religion doesn't matter. You
17 know, the -- as an agency we approved that display.

18 Q. Okay. But -- but certainly it's a -- it's a
19 Christian display, though. Correct?

20 A. I guess so, yeah.

21 Q. Pardon?

22 A. I think so, yes.

23 Q. Okay. With regard to artwork that's
24 displayed, you talked about schools. And there are
25 other -- there are adult organizations that also

1 have -- display artwork. Is that correct?

2 A. Yes.

3 Q. And when -- when you approve that type of --
4 of display, do you review the artwork that's going to
5 be displayed before -- before it's approved?

6 A. Sometimes. But mostly I want to see samples
7 to gauge logistical details of --

8 Q. What?

9 A. Logistical details, if it's something that's
10 going to scratch the historic flooring or it doesn't
11 appear to be freestanding. That's usually when I want
12 to see samples. As far as their art, I don't -- I
13 don't ask -- really ask to see that.

14 Q. Do any of the artists, as far as you know,
15 whether they be adults or students, ever include
16 sensitive or controversial subject matter?

17 A. I suppose. It -- but it depends on who -- I
18 can't be in everybody's head to try and figure out what
19 some member of the legislature who walks by would find
20 to be sensitive. But we sometimes have things like
21 that, where if it's student art and if it's, you know,
22 a nude or something like that.

23 Q. Have you ever rejected an application or asked
24 particular artwork not be included?

25 A. No. I mean, we're not -- we're not sensors

1 so -- but they have to obtain sponsorship, and so
2 that's -- that's typically where they're going to have
3 that --

4 Q. They're what?

5 A. They have to obtain sponsorship, and that's
6 typically going to be where that conversation is had
7 about what's appropriate. Because a member, by
8 sponsoring it, they're providing an additional measure
9 of accountability with their own name on it.

10 MR. BOLTON: What am I on? 14?

11 THE REPORTER: (Nods head.)

12 (Exhibit 14 marked)

13 Q. Do you recall Exhibit 14 as an application
14 that went through the channels of the preservation
15 board?

16 A. Yes.

17 Q. And this was -- who was the applicant?

18 A. Oh, the applicant is the Our Lady Queen of
19 Peace school art department, roughly.

20 Q. And --

21 A. Queen of Peace Catholic school.

22 Q. Is there a stated purpose for -- what -- first
23 of all, what were they going to be displaying?

24 A. A quilt with squares created -- created by
25 first grade from van Gogh paintings.

1 Q. And is there a stated purpose in any of the
2 documents that you see with regard to that display?

3 A. Not on this application. They did not state a
4 public purpose.

5 Q. Do any of the pages in that exhibit indicate a
6 public purpose?

7 A. I -- I believe this here, in the
8 description -- I believe that suffices. At least it
9 tells me that it's -- it's safe enough and that it's
10 student art.

11 Q. On the second page of -- of that exhibit, of
12 Exhibit 14 --

13 A. The second page?

14 Q. I think so.

15 A. Yeah.

16 Q. Does it say -- is there -- for purpose of
17 event, is there -- does it say Catholic Advocacy Day?

18 A. Uh-huh.

19 Q. And did you -- do you consider that to be an
20 appropriate public purpose?

21 A. They -- yes. That is a -- it's a separate
22 event. The -- I believe it's the Diocese of Texas do a
23 Catholic Advocacy Day every session, and this -- Our
24 Lady Queen of Peace school, they always line up a
25 student art display on the same day.

1 Q. In terms of Catholic advocacy as a general
2 public purpose, is that, again, something that would --
3 the general public, the public as a whole, would have a
4 direct interest in?

5 MS. MACKIN: Objection, form.

6 A. I don't really know general -- the public at a
7 whole.

8 Q. And again, in terms of making that
9 determination, is it fair to say that you didn't
10 consider deciding that there wasn't -- that it didn't
11 have broad enough appeal -- you didn't consider that
12 was something that was part of your -- your job to
13 determine. Is that correct?

14 A. I'm sorry. Can you say that again?

15 Q. Well, did you consider deciding whether or not
16 Catholic advocacy has sufficiently broad enough direct
17 public interest, that that really wasn't something that
18 was within the purview of your job to determine?

19 A. I don't -- I don't -- I don't really know.

20 Q. Is it fair to say that it isn't something that
21 you regularly took into consideration in making
22 decisions?

23 A. This was 2013. I might not have made this
24 decision by myself. I don't -- or as far as the -- as
25 far as the display, you know, I -- I may have made this

1 decision to approve this one on my own. But as far as
2 Catholic Advocacy Day as a whole, I mean, that's
3 something I'll generally talk to our superior --
4 supervisors about, executive staff.

5 Q. With regard to the nativity scene, then, was
6 that -- was that handled as a -- in terms of the
7 approval process, a more complicated approval process
8 because of the substance of the -- of the display?

9 A. I -- I think so.

10 Q. Pardon?

11 A. I think so.

12 Q. What was the last one there? 14?

13 A. 14.

14 (Exhibit 15 marked)

15 Q. The -- Exhibit 15, then, is that -- do you
16 recognize that as --

17 MR. BOLTON: Did I give you one?

18 MS. MACKIN: (Moving head up and down.)

19 MR. BOLTON: Okay.

20 Q. Do you recognize that as paperwork associated
21 with a display application?

22 A. Yes.

23 Q. And would you have been involved in -- would
24 you have been involved in this particular --

25 A. I --

1 Q. -- approval?

2 A. I don't recall this particular application.

3 But the -- well, I don't recall this particular
4 application, but if the install date was February 9th,
5 2013, I would have been involved. If the install date
6 was 2012, as indicated on the second page here, then I
7 wouldn't have been.

8 Q. Do you have any recollection of -- of this
9 particular display?

10 A. I don't recollect this particular one.

11 Q. It indicates on the -- on the second page of
12 the -- of the exhibit that the purpose of the exhibit
13 is to connect college students with established
14 organizations that promote conservative values. Do you
15 see that?

16 A. Uh-huh.

17 Q. And the -- the exhibitor -- the exhibit's --
18 the sponsoring organization is the Young Conservatives
19 of Texas Foundation. Do you see that?

20 A. Uh-huh.

21 Q. Is that -- in terms of promoting the -- the
22 public purpose, is that -- do you think that that
23 satisfies the criteria for the preservation board?

24 A. Well, it's open to all the public so --

25 Q. Okay.

1 A. -- yeah.

2 Q. So in terms of having a direct public interest
3 in the matter and -- and, you know, benefiting the
4 public at large, in terms of how you would apply the
5 preservation board's rules, this would -- this would be
6 within the scope of their rules for approval?

7 A. We approved it. Do you have -- do you have
8 other -- I mean, we -- this wasn't one that we
9 approved. Do you have documentation that shows that we
10 approved this? I believe that we probably did but --

11 Q. Well, let me ask this. In terms of -- if --
12 if this application came to you now, I mean, and you
13 were dealing with it, would you -- I mean, as you apply
14 the rules and the criteria for the preservation board,
15 would you have any problem with this application?

16 A. I mean, if it's -- you know, the gallery that
17 they're applying for is open to the public and it was
18 sponsored and the dates are available, the logistics
19 line up, then, yeah, I would say this would be
20 something we would approve.

21 Q. And obviously not all members of the public --
22 well, would this be at all sensitive or controversial?

23 A. I would consider this -- I would think this
24 would warrant me asking my direct supervisor about it,
25 possibly even going further.

1 Q. Certainly not -- not everybody in Texas is --
2 is -- is a conservative.

3 A. Right.

4 Q. Or -- I mean, in a sense the purpose here is
5 to -- to promote some -- there's a sense of
6 conservative advocacy involved with this application,
7 isn't there?

8 A. Yes.

9 MS. MACKIN: Objection, form.

10 Q. I've got to -- I've got to tell you, though,
11 that in -- you know, sometimes -- sometimes I can be
12 too serious. And I've got to tell you in advance that
13 this particular application brought a little bit of a
14 smile to my face, but I'll ask you about it as soon as
15 I get this sticker off here. Let's see.

16 (Exhibit 16 marked)

17 Q. Would you have been -- and what did I -- what
18 did we put on that one? Exhibit --

19 A. 16.

20 Q. -- 16?

21 Would you have been involved in the
22 approval of this particular --

23 A. Yeah.

24 Q. -- application?

25 A. I remember this one.

1 Q. Pardon?

2 A. I remember this one, yes.

3 Q. And this was by what organization?

4 A. Texas Chiropractic Association.

5 Q. And what is the stated purpose of this
6 particular display?

7 A. Their stated purpose is to give free massages
8 to those who work at the Capitol, but I distinctly
9 remember having a conversation with Mr. Darby that they
10 would have to have it open to everyone at the Capitol.

11 Q. Okay.

12 A. Yeah.

13 Q. But again, there's a -- there's a certain
14 element of advocacy by the -- by chiropractors with
15 regard to this display.

16 A. Uh-huh.

17 Q. Is that correct?

18 And in fact --

19 A. I would also add I think this is one where in
20 follow-up with some of my supervisors, we would
21 probably not approve this for that space in the north
22 gallery anymore. It would be something we would steer
23 towards the conference center, just because it's a
24 little more private to give somebody a massage in a
25 room rather than in an exhibit space but --

1 MS. MACKIN: It's an art installation.

2 Q. Is it fair to say, though, that a lot of these
3 applications relate to fairly specific interests in
4 terms of the chiropractors or Realtors or -- or
5 particular schools wanting to promote their students?

6 A. Right.

7 Q. And -- and as long as you can associate their
8 purpose as being some -- basically legitimate, you
9 associate that, then, with -- as long as the public
10 had -- with a broad public interest and benefit to the
11 public?

12 A. Well, they're expressing themselves to the
13 public. If the public doesn't hear them or want to
14 listen, that's not under my control but . . .

15 (Exhibit 17 marked)

16 Q. Exhibit 17, is that an application that you --

17 A. Uh-huh.

18 Q. -- were involved with?

19 A. Uh-huh.

20 Q. And the applicant there was -- was what
21 organization?

22 A. The Texas Association of Interior Design.

23 Q. And what was their public purpose?

24 A. It's to promote interior designers, but not
25 any particular firm, just promote the aspects of

1 interior design. To educate, if you will.

2 Q. Okay. Is it fair to say that -- that as you
3 go -- as this process has been implemented and applied
4 by the preservation board in terms of the -- the broad
5 public at large, public interest, and benefiting, you
6 know, the public at large, is it fair to say that the
7 preservation board has not really scrutinized
8 applications with a lot of detail in terms of whether
9 or not that criteria is satisfied? If somebody --
10 if -- if an application seems to -- if you think it's a
11 good -- good purpose or -- or organization, you
12 approve. Is that a fair statement?

13 MS. MACKIN: Objection, form.

14 A. If I think their -- if I think their
15 application complies with our rules, then, you know, it
16 would have my vote to approve. It would be approved.

17 Q. And at least prior to -- have you and
18 Mr. Sneed disagreed in the past on -- on applications?

19 A. I'm sure we have.

20 Q. Pardon?

21 A. I'm sure we have.

22 Q. Do you recall any in which -- I mean, you
23 can't recall any application that's actually been
24 denied, can you?

25 A. Applications that have been denied?

1 Q. Yes.

2 A. We've denied a couple, yeah. Like I said,
3 though, usually, you know, the initial contact, if it's
4 a phone call, the -- the person who is inquiring will
5 receive information from me about, you know, our rules
6 up front, or they'll be frank with me about what
7 they're trying to do. And, you know, they -- the
8 potential applicant will decide at that point if they
9 want to pursue it further. So a lot of times by the
10 time they actually get to completing an application
11 and -- and obtaining sponsorship, you know, the writing
12 is on the wall that they're --

13 Q. Is -- have you and Mr. -- well, can you recall
14 any -- any instance specifically where you and
15 Mr. Sneed disagreed on whether or not an application
16 should be approved or not?

17 A. I don't -- I mean, I don't remember because,
18 you know, he's my executive -- or was my executive
19 director. You know, if he said something, that's --
20 you know, he's the boss. So I -- it's not like we
21 would have gone back and forth and I would have said,
22 "Oh, no, please, Mr. Sneed, I -- I really do think I
23 have a point on this one," or something. I wouldn't --
24 that wouldn't happen. He's the boss, right?

25 Q. Right. Your wife would not approve of that

1 discussion.

2 With regard to Mr. Sneed's letter in
3 August of 2016 regarding FFR, did you -- did he discuss
4 that letter with you before he sent it out?

5 A. No.

6 Q. Did he ask for any input from you in terms of
7 the substantive part, other than the -- other than the
8 scheduling issues?

9 A. That would have been -- that would have been
10 the extent of what he would have asked me about, what
11 actually is the availability. But I didn't see the
12 letter or see any drafts of it or anything like that.

13 (Exhibit 18 marked)

14 Q. And then Exhibit 18, is that an application
15 that you're -- that you're --

16 A. Uh-huh.

17 Q. -- familiar with?

18 And who was the sponsor or the
19 organization that was going to be displaying that?

20 A. The organization displaying was the Texas For
21 Responsible Marijuana Policy Education -- or Texas For
22 Responsible Marijuana -- Texas NORML. I'm -- I'm
23 flaking on what their acronym means but . . .

24 Q. Is it fair to say that -- well, first of all,
25 not everyone's in favor of legalization of cannabis.

1 Is that correct?

2 A. I would say probably that's a -- yeah,
3 that's --

4 Q. And this is an organization that advocates for
5 at least some forms of legalization of -- of marijuana.
6 Correct?

7 A. Right.

8 Q. And again, so it's -- it's essentially an
9 advocacy group. Right?

10 A. Uh-huh.

11 Q. And did you -- did you approve that
12 application?

13 A. I -- I'm sure I probably did.

14 Q. Was that an application that was considered
15 controversial, if you recall?

16 A. I mean, it's -- it's controversial. I don't
17 remember the first time I saw an application from Texas
18 NORML. They're here quite a bit. But maybe the first
19 time that they applied I would have asked someone if
20 this -- you know, are we -- is this, you know, safe to
21 proceed or whatever. But . . .

22 Q. In terms of satisfying the public purpose
23 criteria that you apply, though, you don't have any --
24 any reservations about that particular application, did
25 you?

1 A. I don't think so. I mean, there's a
2 discussion all -- everywhere all the time about this
3 issue, and -- and it's -- the public is aware of it, I
4 would say.

5 Q. Do you recall any -- any displays other than
6 the FFRF display by atheists or agnostics or
7 free-thinkers?

8 A. I don't think they've applied. We have
9 approved Buddhist exhibits before.

10 Q. You've what?

11 A. Buddhist exhibits.

12 Q. Uh-huh.

13 A. I don't think I've had a Hindu exhibit, but we
14 have had events with the -- with the Hindu community
15 and other religions other than Christianity.

16 Q. Did -- do you know how -- how the FFRF display
17 came to the governor's attention?

18 A. I do not, no.

19 Q. Does the governor's objection to the FFRF
20 display -- did that surprise you?

21 A. Not -- not particularly.

22 Q. Did the governor have -- why -- why not?

23 A. I mean, just putting two and two together,
24 he's a conservative guy. I mean, that's how he ran. I
25 think he's probably also a pretty faithful religious

1 person himself. So I just imagine --

2 Q. Were you --

3 A. I imagine that's how it came to his attention.

4 Q. Were you aware, at least from media sources,
5 that the governor has promoted and supported public
6 displays of -- religious displays, nativity displays,
7 not necessarily in the Capitol but in other --
8 courthouse displays and things like that?

9 MS. MACKIN: Objection, form.

10 A. I'm not really aware of any of that.

11 Q. Has anybody -- and again, we'll exclude your
12 wife from this discussion. Has anybody, whether
13 preservation board contact or just other -- other
14 people, indicated to you that -- that the governor's
15 objection to the FFRF display -- that that would be
16 something that they would expect, given the reputation
17 of the governor?

18 A. I'm sure that I had those discussions with
19 friends or something. But it didn't occupy a ton of my
20 time.

21 Q. Pardon?

22 A. It didn't occupy a ton of my time.

23 (Exhibit 19 marked)

24 Q. Now, Exhibit Number 19 is a painting that has
25 not been displayed in the Capitol, but it's a painting

1 by -- and I don't recall the specific artist now, but
2 by -- by a reputable artist. If this applic -- if this
3 painting came to you or applicant -- person doing an
4 application for a display in the Capitol, in light of
5 the governor's objection to FFRF, would you consider
6 that this painting, Exhibit Number 19, would be
7 something that would be approved or not?

8 MS. MACKIN: I'm going to object to this
9 exhibit, if -- unless the witness has seen it before,
10 and also to the form of this question. But you can
11 answer.

12 Q. Have you seen it before?

13 A. I've never seen this before.

14 Q. Okay. Can you look at it now?

15 A. Yes. I -- I couldn't speculate as to whether
16 we would approve this or not approve it. They'd have
17 to fill out an application.

18 Q. Pardon?

19 A. They would have to fill out an application.

20 Q. Okay.

21 A. It could be 30 feet tall and wouldn't fit in
22 the Capitol.

23 Q. Okay. But just in terms of the subject -- the
24 subject matter, would you consider that this would be
25 objectionable?

1 A. You're asking my opinion about what I find
2 objectionable?

3 Q. Well, your -- your opinion as someone -- as
4 the events and exhibits coordinator for the State
5 Preservation Board.

6 A. I mean, if it were to receive sponsorship, we
7 might review it, but it would -- I mean, I would
8 consider it to be -- if an application like this hit my
9 desk, I would consider it to be sensitive enough to
10 warrant a discussion -- an internal discussion.

11 Q. Are there any lessons or principles that
12 you've derived from the governor's objection to the
13 FFRF display that now inform how you approach
14 applications?

15 A. Sure. Any -- anything approaching religion or
16 freedom from that, I would consider -- I would want to
17 consider additional input from other sources within our
18 agency.

19 Q. And --

20 A. It's -- it's heightened my awareness about a
21 lot of applications since then.

22 Q. Is there anything in -- I can't remember what
23 number -- one of the earlier exhibits, the -- the
24 rules, the applicant --

25 A. Uh-huh.

1 Q. It was a four-page exhibit. It had a two-page
2 application and then two pages of --

3 A. Right.

4 Q. -- of your rules.

5 Is there -- is there anything in those
6 rules that -- that you construe to prohibit humor or
7 satire?

8 A. I mean, the closest thing I could see that
9 would prohibit humor or satire would be the public
10 purpose guideline.

11 Q. And is there a -- now, the governor -- is it
12 fair to say that the governor -- that the governor
13 considered the FFRF display to be offensive?

14 A. I don't --

15 MS. MACKIN: Objection, form.

16 A. Yeah, I don't know the governor. Never met
17 him. I don't know what he finds offensive.

18 Q. Is there any sort of -- putting the -- the
19 governor aside, in terms of how the agency has
20 generally approached the application of -- or the
21 processing of applications, recognizing that you're not
22 a sensor and that you allow diverse viewpoints to be
23 expressed in -- in Capitol displays, is there any --
24 have you previously applied any sort of test for
25 offensiveness when evaluating applications?

1 A. I'm not recalling anyone getting that far with
2 an application. Like I said, if it hasn't been
3 sponsored, there's no point in me looking at it to
4 review for approval. So, you know, if somebody submits
5 something that's really offensive, they're probably not
6 going to get a sponsor because the members are trying
7 to, you know, keep a finger on the pulse of what
8 they're sponsoring from their constituents.

9 Q. Certainly after this display was up in the
10 Capitol for four days or so, you were not bombarded
11 with complaints from the public that they were offended
12 by it. Is that correct?

13 A. I didn't hear word one about that display from
14 anybody. I don't think there were headlines made
15 when -- the day it was installed, didn't get a pat on
16 the back from anybody saying thanks or didn't get an
17 angry phone call.

18 Q. And finally, just in terms of how the process
19 went, you said that there were -- that there were
20 apparently meetings within the -- the preservation
21 board to consider that application.

22 A. Uh-huh.

23 Q. In terms of interaction with the FFRF people,
24 were you the sole contact with FFRF on that
25 application?

1 A. As far as I know, yeah.

2 Q. And again, I'm talking about the --

3 A. From our agency, yes.

4 Q. Right. I'm talking about the 2015 rather than
5 the 2016 application.

6 A. Okay. Yeah.

7 Q. And a fellow by the name of Sam Grover was
8 your contact?

9 A. Yes.

10 Q. And my impression is that -- that you both
11 found each other easy to work with?

12 A. Yeah.

13 Q. I can tell you that he found you to be --

14 A. I --

15 Q. -- cooperative.

16 A. I thought we had a very professional rapport.
17 I -- yeah, he -- he seemed to be very easy to work
18 with.

19 Q. Okay. That's all I have. Okay? And it's not
20 even 3 o'clock yet. Thanks -- thanks for your patience
21 today.

22 A. Okay.

23 THE WITNESS: What do you want to do with
24 these?

25 MS. MACKIN: I'm just going to have a

1 couple --

2 THE WITNESS: Okay.

3 MS. MACKIN: -- questions for you.

4 But --

5 MR. BOLTON: I tried to get you out of
6 here.

7 MS. MACKIN: I won't be long, I promise.
8 Do you -- do you want to take a quick break --

9 THE WITNESS: No.

10 MS. MACKIN: -- before we --

11 THE WITNESS: No.

12 MS. MACKIN: -- get into it? All right.

13 THE WITNESS: No. Let's get it over
14 with.

15 MS. MACKIN: Get right into it. I'd also
16 like to make sure we request our read and sign on the
17 record.

18 MR. BOLTON: And before you go, most --
19 most important -- because I'm the worst offender --
20 she's got to make sure she's got all the exhibits
21 before any of us leave this room.

22 THE WITNESS: Okay. So I'm not keeping
23 these, I guess, then.

24 MR. BOLTON: They usually end up -- I'm
25 usually the problem.

Robert Davis

100

EXAMINATION

1

2 BY MS. MACKIN:

3 Q. Okay. So I just want to make sure we get the
4 tail -- the timeline nailed down.

5 A. Okay.

6 Q. So the first time that you heard from the
7 Freedom From Religion Foundation about displaying an
8 exhibit in the Capitol was in 2015?

9 A. Yes, I believe so.

10 Q. Okay. And that would have been an email,
11 maybe?12 A. I thought -- my recollection -- and I -- I've
13 had 1600 events or exhibits since then so I don't
14 remember every detail. But my recollection is that Sam
15 Grover had called me first.

16 Q. Okay.

17 A. But I could be completely wrong. I'm just
18 speculating on my own memory.19 Q. Okay. And then I'm going to go ahead and
20 introduce a couple of exhibits.

21 A. Okay.

22 (Exhibit 20 marked)

23 Q. So the first application --

24 A. Okay.

25 Q. Does that -- does that look like the first

1 application that you received?

2 A. It does look like the first application so far
3 that I received.

4 Q. And how do you recognize it as such?

5 A. The mention that they -- their intended
6 sponsor would be Representative Elliott Naishtat tells
7 me that this was the first application they had
8 submitted to our office.

9 Q. And why is that significant of Representative
10 Naishtat?

11 A. Because Representative Naishtat's office
12 called me and said that they -- they said, "Have you
13 seen the -- the display materials?" And my
14 recollection is that I had not even seen the
15 application at all, because I believe I -- my first
16 contact had been a phone call with Sam Grover, is what
17 I recall.

18 And as is common, potential applicants
19 will send the application to a member of the
20 legislature before I see it. They want to get their
21 sponsorship, everything tied up, before they send it
22 along to me. So when Naishtat's office called me and
23 said, "We" -- she -- she said in a nutshell, "We're not
24 going to sponsor this." And I said, "Well, I haven't
25 seen it yet." And -- and so I -- I recall that she

1 forwarded it on to me -- forwarded it on to me.

2 Q. When you said she said, "We're not going to
3 sponsor this," who are you referring to?

4 A. Judith Dale, who was his staffperson at that
5 time.

6 Q. Did she say why?

7 A. She and I would always speak very casually,
8 and I think she just said, "Elliott's not going to go
9 for this because of the sign," which is the -- the
10 original banner signage that they had accompany the
11 display.

12 Q. And that would be the sign displayed on --

13 A. It's on --

14 Q. -- the fourth page of Exhibit 20?

15 A. Yes.

16 Q. Okay. What does that sign say?

17 A. "At this season of the Winter Solstice, let
18 reason prevail. There are no gods, no devils, no
19 angels, no heaven or hell. There is only our natural
20 world. Religion is but myth & superstition that
21 hardens hearts and enslaves minds." And then it says
22 "Freedom From Religion Foundation, FFRF.org."

23 Q. And what are the dimensions?

24 A. Seven feet wide by four feet tall. Doesn't
25 give a width.

1 Q. Okay. Had you ever in your time at the
2 preservation board seen an exhibit application like
3 this?

4 A. Not -- no, not particularly. I mean, the
5 closest to something like this would have been the
6 Thomas More one that came in a year before, just in a
7 sense of, you know, how sensitive it is.

8 Q. Okay. What --

9 A. But I had never seen a Freedom From Religion
10 or atheist exhibit display application or anything like
11 that before.

12 Q. Okay. Had you ever seen an application that
13 referred to -- that used words like "enslaves" or
14 mentions superstition?

15 A. No, I had not.

16 Q. Now, we already looked at -- let's see -- the
17 application that I believe ultimately was approved.
18 And that would be Exhibit 4. If I can turn you back to
19 that?

20 A. Exhibit 4? Sorry.

21 Q. Yes, please. That's all right.

22 A. Just keep expecting people will hand me the
23 stuff and not have to go through my own pile.

24 Q. You're getting spoiled.

25 A. Okay. Exhibit 4.

1 Q. And so down at the bottom of the first page it
2 says that the display will include a banner which will
3 read "Happy Winter Solstice. At this season of the
4 Winter Solstice, we honor reason and the Bill of Rights
5 (adopted December 15, 1791). Keep State & church
6 separate. On behalf of Texas members of the Freedom
7 From Religion Foundation."

8 Is that -- did I read that correctly?

9 A. Yes.

10 Q. And is that the sign that ultimately
11 accompanied the exhibit that was displayed in the
12 Capitol?

13 A. I believe so. That's -- I believe that
14 language was included on that sign.

15 Q. Okay. So the revised application it looks
16 like was submitted on July 7th, 2015, and then it was
17 approved on July 20th, 2015?

18 A. The submission date on this one signed by Sam
19 Grover is the July 20th.

20 Q. Okay.

21 A. It looks like I made -- I -- it looks like I
22 wouldn't have approved it until August 4th, based on my
23 little note here just cleaning up the dates.

24 MR. BOLTON: Can you -- for purposes of
25 the record, can you give some sort of description

1 where -- what you were referring to in terms of the
2 notation.

3 A. I have -- I have -- the original dates they
4 had applied for were December 21st through December
5 25th. And we -- the Capitol's closed on the 24th and
6 25th and we don't display on those days. So I
7 articulated that to Mr. Grover and -- but then I said,
8 "Hey, I've got some dates on the front end so we'll --
9 we'll just push the whole thing forward by a few days."
10 He was agreeable to that, and I just made that change
11 with a pen here and initialed and dated that change.
12 So that looks to me like it says 8/4, August 4th, which
13 that would have probably been the date that it was
14 approved and put on our calendar.

15 Q. Okay. Thank you.

16 And then -- so you also received an
17 application in 2016 from the Freedom From Religion
18 Foundation.

19 A. That's right.

20 Q. Is that correct?

21 A. Yes.

22 Q. Is the document that I'm marking Exhibit 21 a
23 copy of that application?

24 (Exhibit 21 marked)

25 MR. BOLTON: What number?

1 MS. MACKIN: 21. I'll give you a copy in
2 one second. I thought we were going to take a break
3 and I could get all my documents organized.

4 A. Yes. This looks like the 2016 application.

5 Q. Okay. And you mentioned that you received
6 that, and then you went and talked to the board's
7 attorney?

8 A. Yes.

9 Q. And when you received Exhibit 21, had Freedom
10 From Religion Foundation already sued the board and
11 Governor Abbott?

12 A. I believe that was the case, yes.

13 Q. So is that why you would have gone to talk to
14 your attorney?

15 A. Yes.

16 Q. All right. So Mr. Bolton asked you a bunch
17 about the public purpose requirement that is applicable
18 to Capitol exhibits and kind of the standards under
19 that public purpose requirement. And if you would
20 refer back to Exhibit 1, please.

21 A. Okay.

22 Q. Which attaches, at the third and fourth pages,
23 at least the May 2012 version --

24 A. Yes.

25 Q. -- of the policy for exhibits in the ground

1 floor rotunda and the Capitol extension. Is that
2 right?

3 A. Yes.

4 Q. Okay. So you testified that you focus on --
5 the first thing you do when an exhibit comes in is you
6 check whether the requested dates are available.

7 A. Uh-huh.

8 Q. Correct?

9 And then you mentioned that you also
10 check whether it promotes a commercial enterprise or
11 something like that.

12 A. Correct.

13 Q. Correct?

14 And then you mentioned that you also
15 focus on the logistical details.

16 A. Right.

17 Q. Is that right? Okay.

18 So -- you also mentioned that sometimes
19 you'll have conversations with potential state official
20 sponsors if the -- if you have a question about what
21 the exhibit is discussing?

22 A. I said I will talk to the state official
23 sponsor's office about that?

24 Q. Uh-huh.

25 A. Maybe just for clarification if I'm not

1 getting enough information from the -- from the
2 applicant.

3 Q. Okay.

4 A. I might ask the -- the sponsoring office to
5 clarify.

6 Q. You --

7 A. But that's usually -- it -- still, that's
8 usually in -- you know, what I would call
9 nuts-and-bolts details about when they want to bring it
10 in, how big, you know, has this member's office seen
11 it, do they have any -- you know, pretty much purely
12 logistics.

13 Q. So it sounds like, then, the -- the
14 conversation about whether an exhibit fulfills a public
15 purpose, as defined in the policy and the
16 administrative code, is usually had between the state
17 official sponsor and the exhibiting organization?

18 A. A lot of times, yeah.

19 Q. And that you'll kind of usually defer if a
20 state official sponsor has signed off on the exhibit?

21 A. Yes.

22 Q. But if you --

23 A. As well as events. Not just exhibits, yeah.

24 Q. But if you get one that you believe is
25 sensitive, you'll flag it for further review?

1 A. Right, yeah.

2 Q. So you in your role as the events and exhibits
3 coordinator, then, aren't heavily involved in kind
4 of -- you don't see an exhibit and say, "I'm applying
5 this public purpose requirement"?

6 A. Yeah, yeah.

7 Q. It's -- it's kind of -- the check is from the
8 state official sponsor requirement?

9 A. Yes.

10 Q. As well as an internal discussion if you
11 notice something?

12 A. Yeah.

13 Q. Okay.

14 A. That's really the idea behind the sponsorship,
15 is that the members will help determine -- the members
16 who may or may not sponsor will help determine the
17 purpose, more streamlined. I'm often just a
18 facilitator.

19 Q. What?

20 A. You laughed. I thought maybe --

21 Q. No, I sniffled.

22 A. Okay.

23 Q. Sorry.

24 Okay. And then there was also a little
25 bit of discussion about -- Mr. Bolton showed you some

1 exhibit applications from the chiropractors, the
2 interior designers, normal -- that kind of would
3 involve discussion of policy issues. Right?

4 A. Right.

5 Q. And so there is an exclusion, though, from the
6 public purpose requirement for campaign activities and
7 such. Right?

8 A. That's like campaigning for public office.
9 You couldn't have a "vote for me" display. That's how
10 I understood from day one here at the agency that
11 that's how that was implemented. Now, we do sometimes
12 check -- with Texas NORML, if they were applying and
13 they had signage all throughout the hallway that said,
14 "Members vote yea on House Bill 1055" or something,
15 that would probably be something we would, you know,
16 try and curtail. But if they're just raising awareness
17 about issues surrounding cannabis, that's a
18 conversation being had in the public -- within the
19 public, so to me that qualifies but . . .

20 Q. Sure. Would your -- okay. I'd like to turn
21 your attention back to Exhibit 14. I'd just like to
22 get something a little bit clarified because I wasn't
23 sure I quite understood your testimony.

24 A. Okay. Okay. Exhibit 14?

25 Q. Yes. So we have the exhibit application for

1 the quilts made with squares created by first grade
2 from van Gogh paintings.

3 A. Uh-huh.

4 Q. And the same by junior high.

5 A. Uh-huh.

6 Q. And then on page 2 it says Catholic Advocacy
7 Day, OLQP art exhibit.

8 A. Yeah.

9 Q. So is Catholic Advocacy Day an event?

10 A. That is a -- they have a rally on the Capitol
11 grounds. Like I said, the diocese from all over the
12 state come and they have a Catholic Advocacy Day and
13 they have a big rah-rah rally on the grounds and they
14 talk about issues that are important to the Catholic
15 community. It's not something that happens, you know,
16 all throughout the building.

17 Q. And so this application, then, that -- this --
18 what appears to be a Catholic school wanted to have
19 their van Gogh quilts on display on the same day that
20 that exhibit was happening?

21 A. On the same day as that event, yeah.

22 Q. But the exhibit itself was not Catholic
23 advocacy.

24 A. Not -- right. And they do a choir --
25 sometimes the -- Our Lady Queen of Peace will do a

1 choir performance on the same day as Catholic Advocacy.
2 They just -- they're a Catholic school. I guess they
3 want to be a part of it. But it's -- if you ask the
4 people who put on the Catholic Advocacy Day, they'd
5 probably say, "We don't know those people. We're not
6 affiliated with them." So --

7 Q. Okay.

8 A. That's something that looks like
9 Representative Bonnen's office just wrote on there.

10 Q. Okay. I just wanted to clarify what the
11 actual exhibit was.

12 A. Yeah.

13 Q. And then you kind of touched on this, but
14 you -- you were asked about whether there had been
15 other exhibits like agnostic displays or large secular
16 displays.

17 A. Uh-huh.

18 Q. And you testified that there have not. Is
19 that right?

20 A. Yeah, I don't recall other agnostic displays.
21 I mean, there's a group that's had events before called
22 Secular Texas, but they've done like a rally or a press
23 conference or something.

24 Q. Do you recall any applications for agnostic
25 displays --

1 A. I don't recall --

2 Q. -- that --

3 A. -- anything like that.

4 Q. Okay. And Mr. Davis, you're not an attorney.
5 Is that right?

6 A. That's correct.

7 Q. And have you attended any law school?

8 A. No.

9 Q. Congratulations.

10 You were asked about language on the
11 Thomas More exhibit application where the applicant
12 described the display as a citizen exercise of free
13 speech.

14 A. Correct.

15 Q. Do you remember that?

16 A. Uh-huh.

17 Q. Okay. Would -- does that description mean
18 anything to you when you're evaluating the exhibit
19 application -- did it mean anything to you?

20 A. I don't remember what it -- what it would have
21 meant to me. I mean, the phrase "citizen exercise of
22 free speech," it sounds like somebody who's -- it
23 sounds like it's put on the application almost as in
24 they're not expecting a "no" answer for -- on approval
25 or not.

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1 Q. But your -- your job duties as Capitol events
2 and exhibits coordinator don't involve determining
3 whether something is a citizen exercise of free speech,
4 do they?

5 A. No. I think that's usually on the part of the
6 sponsor, or it would be a conversation that would go
7 above my head to the executive director and beyond.

8 Q. Well, and as a nonattorney, you wouldn't be
9 qualified to make that determination anyway. Correct?

10 A. I -- yeah, I would say so.

11 Q. Okay. That's all I have.

12 A. Okay.

13 Q. Thank you very much.

14 MS. MACKIN: We'll pass the witness.

15 MR. BOLTON: Let me just -- do I have
16 just a couple minutes?

17 THE VIDEOGRAPHER: (Nods head.)

18 MR. BOLTON: Okay.

19 FURTHER EXAMINATION

20 BY MR. BOLTON:

21 Q. To follow up, do I understand your testimony,
22 then, that the preservation board does not actually
23 apply the public purpose criteria in determining
24 whether to approve or -- or disapprove applications?

25 A. Well, we do. But as far as my -- as far as

1 what I'm looking for when I see an application, it's
2 typically, you know, the commercial promotion or
3 campaign-related activities, something like that. If
4 the Texas Association for Design says that they believe
5 the public has an interest in interior design, who am I
6 to contradict that.

7 Q. Okay. And -- and is it fair to say that you
8 didn't consider that to be your function or role, to
9 deny that?

10 A. I mean, if I was going to deny an application,
11 I would definitely speak with some people within our
12 agency first. Like I said, most of the time -- by the
13 time they get to the point in which they've completed
14 an application, they've obtained sponsorship, it's
15 on -- it's on cruise control to being approved in some
16 way, shape, or form except for aesthetic changes,
17 logistic details.

18 Q. Certainly the government -- the governor
19 involving himself is unprecedented in your experience?

20 A. It's -- it's not common. I -- I'm not aware.
21 But he may do that. You know, he may have done that,
22 or Governor Perry prior to him might have been
23 involved. I like to think they're paying attention to
24 me.

25 Q. Now, you said in terms of the exercise of free

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1 speech, citizens' exercise of free speech, whether that
2 meant anything to you as a -- as a -- as a lawyer.

3 You're not a lawyer, you said.

4 A. Right.

5 Q. But you also said that in terms of your role
6 and the role of the preservation board, that you're not
7 sensors. Is that a -- is that certainly your
8 understanding of your role in the process?

9 A. That's my understanding of my role in the
10 process.

11 MR. BOLTON: That's all I have.

12 MS. MACKIN: I think we made it.

13 THE VIDEOGRAPHER: It's 1:33, end of tape
14 2. We're off the record.

15 (DEPOSITION ADJOURNED)

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CHANGES AND CORRECTIONS

DEPOSITION DATE: APRIL 24, 2017

Reason Codes: (1) to clarify the record; (2) to conform to the facts; (3) to correct a transcription error; (4) other (please explain).

PAGE	LINE	CHANGE	REASON	CODE
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This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

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SIGNATURE

I, ROBERT DAVIS, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted on the previous page.

ROBERT DAVIS

STATE OF _____

COUNTY OF _____

Before me, _____, on this day personally appears ROBERT DAVIS, known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 2017.

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

COMMISSION EXPIRES: _____

Robert Davis

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1 UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF TEXAS
 3 AUSTIN DIVISION

4 FREEDOM FROM RELIGION §
 FOUNDATION, INC., §
 5 Plaintiff, §
 vs. § CASE NO. 1-16:CV-00233
 6 GOVERNOR GREG ABBOTT, in §
 his official and individual §
 7 capacities, and JOHN SNEED, §
 Executive Director of the §
 8 Texas State Preservation §
 Board, in his official §
 9 capacity, §
 Defendants. §

10
 11 REPORTER'S CERTIFICATION
 12 ORAL AND VIDEOTAPED DEPOSITION OF ROBERT DAVIS
 13 APRIL 24, 2017

14 I, Shelly M. Tucker, Certified Shorthand
 15 Reporter in and for the State of Texas, hereby certify
 to the following:

16 That the witness, ROBERT DAVIS, was duly sworn
 17 by the officer and that the transcript of the oral
 18 deposition is a true record of the testimony given by
 19 the witness;

20 That pursuant to FRCP Rule 30(e)(1) signature
 21 of the deponent was requested by the deponent or a
 22 party before the completion of the deposition;

23 That the deposition transcript was submitted
 24 to the witness or to the attorney for the witness for
 25 examination and signature and return to me within 30

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1 days. If returned, the attached Changes and
2 Corrections page contains any changes and reasons
3 therefor;

4 I further certify that I am neither counsel
5 for, related to, nor employed by any of the parties or
6 attorneys in the action in which this proceeding was
7 taken, and further that I am not financially or
8 otherwise interested in the outcome of the action.

9 Certified to by me this 1st day of
10 May, 2017.

11
12
13 

14 SHELLY M. TUCKER, RPR, CRR
15 Texas CSR 4419 - Expires 12/31/18
16 DepoTexas - Firm Registration No. 17
17 1016 La Posada, Suite 294
18 Austin, Texas 78752
19 (512) 465-9100
20
21
22
23
24
25

